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SPEECH

OF

Thomas Hart
MR. BENTON,

OF MISSOURI,

Delivered in the Senate of the United States,

(IN SECRET SESSION,)

ON THE

MISSION TO PANAMA,

MARCH 13, 1826.

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INTRODUCTION.

THE following note was received from Mr. BENTON, with a request to prefix it, with the articles of the treaty referred to, to his speech on the Panama Mission:

NOTE.—The treaties between the Spanish American States, which provided for an *assembly* of Plenipotentiaries at Panama, were drawn up in the Spanish language, and communicated to the Senate in English translations, without originals. Upon reading these translations, I believed them to be loose and inaccurate, and expressed that belief to the Senate; and, eventually, this belief became so strong, that I determined to ascertain the fact. For this purpose I addressed a note to Don Jose Maria Salazar, the Colombian Minister, then at New-York, and requested a copy of one of the treaties in their original language. The return mail brought me his very polite answer, and a copy of the treaty between Colombia and Guatemala. The possession of this enabled me to discover errors in the translations, far more material to the character and powers of the *assembly*, than I had before supposed; and, to expose these, and do justice to truth, I shall here annex, in parallel columns, the five essential articles of this treaty—those which create this *assembly*, define its character, and prescribe its duties—putting the original in the first column, the literal translation in the second, and the translation sent to the Senate in the third. It is to be noted that I received this original copy after I had spoken in the Senate; of course I cannot avail myself, in the body of my speech, of the new advantages of fact and argument which this paper has put within my power: but I shall have recourse to notes, in the proper places, to throw in the facts and conclusions which I have derived from that source.

N. B. The five articles which create the *assembly*, define its character, and prescribe its duties, are the same in every treaty; and the variances seen in the translations sent to the Senate, are the mere effect of loose and slovenly translation.

Washington, March 30.

Original.

Literal Translation.

Translation sent to the Senate.

ART. 15. Para estrechar mas los vinculos que deben unir en lo venidero ambos estados, allanar cu alquiera dificultad que pueda presentarse o interrumpir de algun modo su buena correspondencia y armonia, se formara una asamblea* compuesta de dos plenipotenciarios por

ART. 15. In order to draw closer the chains which ought to unite both States in future, to remove any difficulty which may present itself, or interrupt in any way their good correspondence and harmony, an *assembly* shall be formed, composed of two plenipotentiaries from

ART. 15. To cement the bonds of future union between the two States, and remove every difficulty that may occur to interrupt their good correspondence and harmony, there shall be formed a *Congress*, composed of two Plenipotentiaries from

* *Asamblea*.—This word, in the translation sent to the Senate, is rendered "*Congress*," which is incorrect, and leads to an idea essentially erroneous upon the character of the body. The word "*Congress*," in Spanish *congreso*, is a diplomatic term, known to the law of nations; and signifying a meeting of Plenipotentiaries, for the purpose of treating for peace. The term *asamblea*, signifies *assembly*, has no diplomatic sense, and may be applied to a meeting of any kind, for business or pleasure.

cada parte en los mismos terminos y con las mismas formalidades que en conformidad de los usos establecidos deben observarse para el nombramiento de los ministros de igual clase en otras naciones.

ART. 16. Ambas partes se obligan a interponer sus buenos oficios con los gobiernos de los demas estados de la America antes española para entrar en este pacto de union, liga y confederacion perpetua.

ART. 17. Luego que se haya conseguido este grande e importante objeto se reunirá una asamblea general^{*} de los estados Americanos compuesta de sus plenipotenciarios con el encargo de cimentar de un modo mas solido y estable las relaciones intimas que deben existir entre todas y cada uno de ellos y que les sirve de consejo en los grandes conflictos, de punto de contacto en los peligros comunes, de fiel interprete de sus tratados publicos cuando ocurran dificultades, y de juez^{||} arbitro y conciliador en sus disputas y diferencias.

ART. 18. Este pacto de union, liga y confederacion, no interumpira de manera alguna el ejercicio de la soberania nacional de cada una de las partes contratantes, asi por lo que mira a sus leyes y al

potentiaries for each party, in the same terms, and with the same formalities which, in conformity with established usages, ought to be observed for the nomination of ministers of equal rank among other nations.

ART. 16. Both parties oblige themselves to interpose their good offices with the Governments of the other States of America, formerly Spanish, to enter into this compact of union, league, and perpetual confederation.

ART. 17. As soon as this great and important object may be obtained, a *general assembly* of the American States, composed of *their* plenipotentiaries, shall convene, for the purpose of cementing, in a manner more solid and durable, the intimate relations which ought to exist between each and every one of *them*, and which may serve *them* for a council in great conflicts, for a point of union in common dangers, for a faithful interpreter of *their* public treaties when difficulties occur, and for judge-arbitrator, and conciliator, in their disputes and differences.

ART. 18. This compact of union, league and confederation, shall not interrupt in any manner the national sovereignty of either of the contracting parties, as well as in what concerns their laws, and

each contracting party, who shall be appointed with the same formalities as are required by established usages in the commission of ministers of equal character among other nations.

ART. 16. The contracting parties oblige themselves to interpose their good offices with the other *ci-devant* Spanish States of America, to induce them to unite in this compact of perpetual union, league and confederation.

ART. 17. As soon as this great and important object shall be accomplished, a general *Congress* shall be assembled, composed of Plenipotentiaries from the American States, for the purpose of establishing, on a more solid basis, the intimate relations which should exist between them all, individually and collectively, and that it may serve as a council in great events, as a point of union and common danger, as a faithful interpreter of public treaties when difficulties may arise, and as an arbitrator and conciliator in their disputes and differences.

ART. 18. This compact of union, league and confederation, shall not affect, in any manner, the exercise of the national sovereignty of the contracting parties, in regard to their laws and the establish-

^{*} *Asamblea general.*—These words in the same translation are rendered *general Congress*, and are essentially erroneous, as shewn above.

[†] *Sus.*—This possessive pronoun is not translated at all in the version sent to the Senate. Its omission is highly material: for it is, in this place, a word of limitation and restriction. It signifies *their*. Pre-fixed to plenipotentiaries, as it is done in the true translation, and its effect is immediately perceived.

[‡] *Les.*—Not translated. It is a small word, but a master one in this place. It tells for whom this council is to act. It limits and confines it to *them*, the Spanish American States who join the confederation.

[§] *Sus.*—A second time not translated in the copy sent to the Senate.

^{||} *Juez.*—Not translated. It signifies *Judge*, and combines with the word *arbitro*. The latter alone is translated, and rendered *arbitrator*. The phrase *Juez arbitro*, in Spanish, and *Juge arbitre*, in French, is common to those two languages, and well known as a law term, importing judicial character. It may be rendered, in English, *judge-arbitrator*.

establecimiento y. forma de sus respectivos gobiernos, como por lo que hace a sus relaciones co las demas naciones extranjeras.*

ART. 19. Siendo el Istmos de Panama una parte integrante de Colombia y el mas adecuado para. aquella agusta reunion, esta Republica se compromete gustosamente a prestar a los plenipotenciarios que compongan la assamblea de los estados Americanos todos los auxilios que demanda la hospitalidad entre pueblos hermanos† y el caracter sagrado e inviolable de sus personas.

the establishment and form of their respective Governments, as in what affects their relations with other foreign nations.

ART. 19. The Istmus of Panama being an integral part of Colombia, and the most suitable for that august assemblage, this Republic, with pleasure, obliges itself to extend to the plenipotentiaries which may compose the assembly of the American States, all the aids which hospitality among brotherly people, and the sacred and inviolable character of their persons demands.

ment and form of their respective Governments, nor in regard to their relations with other nations.

ART. 19. As the Istmus of Panama is an integral part of Colombia, and the point best suited for this august assembly, this Republic freely engages to afford to the Plenipotentiaries of the American States composing it, all the attentions which are required by hospitality among sister States, and by the sacred and inviolable character of their persons.

* *Estranjeras*.—Not translated. It signifies *foreign*, and qualifies the noun *naciones*—nations.

† *Pueblos hermanos*.—Brotherly people—rendered, *sister states*, in the translation sent to the Senate.

NOTE.—The word *congreso* never occurs once in the treaties; it is always, *asamblea*. To those who know any thing of the punctiliousness of the Spanish character, the reason will be apparent: the treaties had used the term *plenipotentiaries*, which is diplomatic; but the *plenipotentiaries* were to convene for a purpose *not* diplomatic, and hence the regular use of the word *assembly*.

The word *congreso* has two meanings in Spanish,—1. *Junta de muchos ministros para tratar y ajustar las paces entre principes, o republicos*.—2. *Ayuntamiento de hombre y muger*.—In French it has the same two meanings:—CONGRES: 1. *Assemblée de ministres pour traiter de la paix*.—2. *Epreuve de la puissance ou impuissance des gens mariés*.—Now, as the assembly at Panama was intended for neither of these purposes, the use of a term which might have raised a false implication to that effect, was carefully avoided.

Speech.

MR. BENTON, of Missouri, addressed the Senate as follows:

MR. PRESIDENT: I had not expected to speak in this debate; and if I had spoken among the first it would have been on a different side from that on which I now appear. Before I had examined this question, I was willing to have voted for this Mission, such as I saw it represented to be in the President's message, and in the publications of the day. But time and reflection have done their office. The report of our Committee on Foreign Relations, when read at the Secretary's table, set me a thinking, and the subsequent study of the report, and of the treaties which create this Congress, have wrought

a decided change in my mind. I am now ready to vote against the Mission, but do not wish to vote upon the Resolution reported by the Committee, because a vote upon *that* will not express my exact opinion, and because it contains a word, strictly correct, I admit, but calculated to lead undisciplined minds, in this age of loose talking, to an erroneous and false conclusion. Thus, I am laid under a sort of necessity to submit an amendment. The submitting of this, lays me under an absolute necessity of exposing my reasons for doing so; and the exposition of these reasons, presents me as a speaker in a case in which I had expected to act no other part than that of a juror in his box. But the Senate need not to be alarmed. I do not premeditate a speech of formal parts against them; for it is no time now for exordium and peroration. In this last hour of a long debate, nothing can be tolerated but a straight forward argument of facts and conclusions, reasons and authorities. The politeness even of this Senate, can endure no more; and, with this conception of my duty, I proceed immediately to the discharge of it.

The Senate is called upon, as the Constitutional adviser of the President, to give its opinion to him upon his proposition to send Ministers to the Congress of the Spanish American States assembled upon the Isthmus of Panama.

The circumstances out of which this proposition has grown, as disclosed to us in the President's communications, are these: A conditional invitation to send representatives to this Congress was made to this Government last spring, and conditionally accepted by it. The Ministers of Colombia and Mexico, two out of the five powers which compose the Congress, made known to our Secretary of State, in an unofficial conversation, the wishes of their governments that the United States should be represented in that assembly of the States of the two Americas; and the President, upon receiving the Secretary's report, expressed his willingness to send the representatives requested, upon condition of receiving satisfactory information upon four preliminary points which he designated. This might be in the months of April or May last, for they are both Spring months, and the time is not otherwise indicated than by a reference to the season. The Summer then passed away, and the Autumn also, without hearing more upon this subject; but the commencement of Winter, the month of November, brought up the Ministers again, reinforced by the Envoy from Guatemala, with an invitation, in form, to send the representatives which had been conditionally invited in the Spring, and without having complied with the conditions stipulated for by the President. This took place on the 2d, 3d, and 14th of November; and, on the 30th of the same month, six days before the meeting of the Senate, the President accepted, unconditionally, the invitation which he had accepted on condition in the month of April or May preceding, and without a compliance with his own stipulated terms, or an excuse for the non-compliance with them. The annual message of the 6th of December, made known to the two Houses of Congress the fact of the invitation, of the acceptance, and of the President's intention to commission and send forth the Ministers. The annunciation of this design arrested the public attention, set people to thinking and to talking, and in the

same identical time in which a thousand heads were at work to make "*reconciliation and peace*," between this declared intention of the President on one hand, and the Constitution of his country on the other, another message was received by the Senate in secret sitting, in which the President directly and unequivocally asserted his "Constitutional competency," to institute the mission, without the advice and consent of this body.

The further declaration in the same message, that he had not "*thought proper*" to take any step in this business, without ascertaining the Senate's opinion of its "*expediency*," expressed upon the "*nominations*," contains no qualification of the asserted right; and to suppose that the Senate would not take the distinction between the assertion of a right, and the effect of a condescending temper, would be to suppose them intellectually incompetent to pass judgment upon that claim to "*constitutional competency*," which the President had so openly and boldly set up. The message, thus communicated, has given rise in this Chamber, to two resolutions; the one submitted by the Senator from North Carolina, (Mr. BRANCH,) the other being the one reported by our Committee on Foreign Relations. These two resolutions confront the double aspect which the message wears. The first is not at this time before us; the second *is*; and to the consideration of this resolution I will now proceed.

(Here Mr. B. took up the resolution and read it.)

"*Resolved*, That it is not expedient at this time, for the United States to send any Ministers to the Congress of American Nations, assembled at Panama."

To the terms of this resolution I have two objections; *first*, to the words "*at this time*," which seem to imply, that it may be expedient to send Representatives to this Congress at some future time, but without indicating when, or upon what contingency. I think it probable that the committee and myself are of accord in the belief that this time, and contingency, will never arrive; but, as the contrary is possible, I prefer to make *that* certain which they have left to implication, and to specify the conditions on which I might hereafter give my advice and consent to the institution of the mission.

The *second* objection is to the adjective "*any*," preceding the word "*ministers*." It is a small objection, and apparently not worth taking, and if the resolution was to be read by none but those who drew it, and those who now hear me, I should not take it. But the reading of it will not be confined to such as these. It will spread through the two Americas, and fall under the eyes of many who will not understand the difference between ministers and commissioners, and who may suppose that the committee, and those who support their resolution, have set their faces against sending *any* description of agents to the Congress at Panama. This is not the fact, and to prevent an erroneous conclusion from being drawn by those who are not accurate in the use of language, I have thought it best to object in the use of this little adjective "*any*," and to drop it in the proposition of amendment, which I now submit.

The Amendment.

"*Resolved*, That the Senate cannot advise that it is expedient for the Government of the United States to send Ministers to the Congress of American States

at Panama, before it shall have received satisfactory information upon the following points: *First*, The subjects to which the attention of the Congress will be directed. *Secondly*, The substance and the form of the powers to be given to the respective Representatives. *Thirdly*, The mode of organizing the Congress. *Fourthly*, The mode of action in deciding the questions which may be submitted to it.

The terms of this amendment, Mr. President, pre-suppose the fact, that the Senate is without satisfactory information upon the points indicated; and this pre-supposition I hold it to be true. For the establishment of this truth, I refer to the President's Message, the letters of the Secretary of State; those of the Ministers from Colombia, Mexico, and Guatemala; and the speeches of all the gentlemen who have spoken in this debate. All these differ among themselves, more or less, upon every essential attribute of the Panama Congress, and upon every leading point in the character and duties of our proposed ministers to it. The character of the Congress itself, whether diplomatic, legislative, judicial, or merely "advisory;" the character of the representatives to it, whether Ministers, Deputies or Judges; the subjects upon which they are to deliberate; the mode of acting, whether as a council merely, a congress of deputies, or an assembly of diplomatic ministers; all are fruitful sources of inconsistent and contradictory opinions, running foul of each other, and differing more or less from the treaties which would govern and control all. The report of the Committee points out many of these differences; the labor of gentlemen who have preceded me, have detected many others; and enough yet remain for my enumeration to exhaust your patience in listening and my strength in detailing. The task will not be undertaken, but a few of the most glaring and prominent differences, omitted by others, will be seized upon and presented by me. First, upon the character of the Congress. The President treats it as a diplomatic assembly for the negotiation of treaties in the ordinary form; the Colombian Minister considers it a Congress which is to "*fix*" principles and "*determine*" questions of national law. The Mexican Minister treats it as a council of war, which is to give the greatest effect to the military operations of the confederates; the Senator from Rhode Island (M. ROBBINS) declares it to be a mere advising council, without power to negotiate a treaty, or to enforce obedience to its advice; and the Senator from Louisiana, (Mr. JOHNSTON) looks upon it as a Committee of Public Safety, in which questions of common interest may be discussed, but nothing decided, nor any treaty negotiated. Next, as to the subjects of deliberation in the Congress. Upon this point, the greatest discordance prevails in the enumeration given by each. The Senator from South Carolina (Mr. HAYNE) has clearly exposed these inconsistent and contradictory catalogues; and I will not impair the force of his statement by a lame and imperfect recapitulation.—Then, as to the powers of the ministers. These would seem to result, of course, from the subjects upon which they are to act, and as these are unknown, so are the powers undefined and undefinable. The ministers from Colombia and Mexico entreat us to clothe our envoys with "*full powers—ample powers.*" The President invests our envoys, and presumes the envoys, of the other States to be invested, with power to negotiate

treaties; while the Senators from Rhode Island and Louisiana, who support the President, utterly deny any such authority to any of the ministers. Upon the organization of the Congress, its mode of acting, and of deciding questions, there is no contrariety, because no information has been given, or opinions expressed. The ministers of Colombia, Mexico, and Guatemala, after taking from May till November to answer the President's interrogatories, return him no answer upon these three points nor any excuse for not doing so. I refer to all these contrarieties, at this time, Mr. President, not for the purpose of showing them to be erroneous—that will be done when I shall come to the analysis of the treaties themselves—but for the purpose of showing the CONTRARIETY itself, and of proving, by this single fact, the truth of my position, that we are without “*satisfactory information*,” upon the character, powers, and duties of this Congress. Having done this, I proceed to inquire:

Is this information necessary to us?

The affirmative of this inquiry, it does seem to me, results from the nature of the thing which we are required to do. The President has called upon us for advice; the Constitution makes it our duty to give it. But, to give it in the spirit of the Constitution, we must first be informed ourselves upon all the circumstances of the case concerning which the advice is required. This is the natural course and order of things, even in the ordinary transactions of life. No prudent man gives advice to his neighbor, without first acquiring exact information of that neighbor's situation. No honest lawyer will give advice to his client, without the exercise of a like precaution. And shall we, the Senators of the United States, required, by the Constitution, to be thirty years of age, to ensure our arrival at years of discretion, and vested with a tenure in office longer, by one-third than that of the President, to inspire us with independence—shall we, the Senators of four and twenty States—act without discretion and without independence in giving advice upon the affairs of ten millions of people? Reason would say, no! But we are not left to reason and argument even upon a point so plain. We have authority, and that of the highest order, for insisting on the justice and reasonableness of our request. It is the authority of the President himself, acting upon the identical case now before us, and communicated to the Senate by himself, in his confidential message of December 26th.

[Here Mr. B. read a passage from Mr. Clay's report, in which the Secretary informs the Ministers from Colombia and Mexico, that the President held it to be “*necessary, before*” he could accept the invitation to send Representatives to Panama, to arrange, “*several preliminary points, such as the subjects to which the attention of the Congress would be directed, the substance and form of the powers to be given to the respective Representatives; the mode of organizing the Congress, and its mode of action.*”]

Compare the terms of my amendment, Mr. President, with the terms of the report just read, and you will find them to be identically the same, to a word, and even to a letter. One is a fac-simile of the other. My amendment, is a mere re-occupation of the ground which the President took, as I conceive, with judgment, in May, and which he abandoned, without any reason that he has seen fit to assign to the Senate, in November following; and I must be permit-

ted to argue, that the same "*satisfactory information*" which was necessary to him, before he would accept the invitation to send ministers, is equally necessary to the Senate, before it can advise him to send them.

But, sir, we are placed in a strait. The President exacts our advice, and refuses us further information. The gentlemen in support of the Administration, back the President in this course of conduct, and even deny us the short respite of an adjournment. We are in the condition of a petty jury in a case of homicide, or larceny, locked up, sir, night and day, restricted to the enjoyment of candle and water, and not permitted to separate until the verdict shall be rendered.—This is a new way of getting advice from the Senate.—The oldest members say they never saw the like of it before, not even during the war, when the dangers of the country required the most arduous sittings; but, after what we have seen, we are all prepared for any extremity.

The fact being established, that the Senate has not satisfactory information upon which to act, and being nevertheless forced to act, I shall proceed to examine what we have got, and prove from this that the United States ought not to entangle itself with the Congress of the confederated States of Spanish America.

The most innocent character in which this Congress has been presented to us, is that for which we are indebted to the ingenious speech of the Senator from Rhode Island, (Mr. ROBBINS,)—that of a mere advising council. Taken in that sense, and it is a council of war, deliberating upon the plan of a campaign—meditating the invasions of Cuba, Porto Rico, the Philippine Islands, and the Canaries. Its essential character is belligerent, and to go into it as an "*associate*," is to partake of that character. I take a distinction between going, in the ordinary diplomatic form, to the sovereignty of a country which is at war with another, and going into a council of war for directing military operations, such as this is. The one may be consistent with the neutral position, the other is utterly incompatible with it. Gentlemen betray their sensibility to this fact, when they allege, in mitigation of our conduct, that we go to dissuade the confederates from invading the possessions of Spain. If, in reality, they go for that purpose, they will be very unwelcome counsellors to those who are determined upon that invasion, and who are collecting all possible means to give it the greatest possible effect. And Spain—what will she say to our excuses and apologies? She may disbelieve them, and, in that case, she will consider us as the "*associate*," of her enemy; or, she may affect to credit them, and make them the ostensible ground-work of a gracious act of amnesty and oblivion of our offence. They cannot be received in justification; for associates in any illegal purpose are guilty in equal degrees, without regard to the particular part which each may have acted. A plea, that part of the associates did not concur in the criminal act, rises no higher than to establish a claim for pardon—a claim which, the Senator from South Carolina, (Mr. HAYNE,) has shown you, a King of Great Britain refused to recognize in a peer of the realm.

The advising power is a high one. It cannot be assumed by nations or individuals. Between them, consent alone can give it; between functionaries, the law alone can confer it; but, wherever it is given by consent, or conferred by law, a high moral and honorary obligation is contracted, by all the parties concerned, to conform to such advice. Nothing but fraud, imposition, or change of circumstances, can justify a want of conformity; all of which are grounds of extreme delicacy to be assumed between nations, and yet the only ones which the dissentient party can plead with honor. If we go into council with these nations, we must either follow the advice given, or reject it. If we follow it, then the free deliberations of our Congress here are trammelled and controlled by the Congress at Panama. If we reject it, we must either dissent in silence, and incur the imputation of perfidy, or come out with reasons which may impeach the honor of our associates, and draw upon us the serious consequences of their resentment. Upon this subject, we already have some experience with one of these powers. A convention for the suppression of the slave trade was negotiated with Colombia in 1825, sent home for ratification, and rejected by the Senate in the undisputed exercise of its constitutional power. Yet, Colombia is dissatisfied at this rejection. Her minister here has adverted to it in terms which cannot be misunderstood, and has even proposed it for the consultation and advice of the Congress at Panama! The decision of the American Senate to be overhauled by the Congress at Panama!* Suppose we agree to this proposition. The result is easily foreseen. The decision will go against us, five to one. Then we must submit; the American Senate must conform; the resentment of the confederate Powers will be held up to alarm us; and if we do not yield to that argument, the effect of the resentment itself will surely be incurred.

The maxims of prudence are the same among individuals and nations. Neither can become too intimate with the other, without danger of breaking up all friendship between them. The sweetest wine make the sourest vinegar; the best of friends become the worst of enemies! No feuds so bitter as those of families; no cause of quarrelling so common as intimacy over-much! No peace-maker half so powerful as distance, independence, and complete separation of interests! and, to my mind, there is infinitely more danger of making enemies than there is chance for gaining friends, in this project of going into this "*advising council*," to mix up our affairs with those of half-a-dozen foreign nations.

I say, Mr. President, the advising power is a high one: It is little less than a power to control and govern the event. The President has no power to advise *this* Congress; he can only recommend; and, little as a recommendation was intended to influence our deliberations, we all know and see its potent and almost irresistible effect. Shall we take advice, then, from abroad? May the President go abroad for that advice which he cannot obtain from this Senate,—his constitutional advisers—and then deliver it to this Congress, with

* The President, in his Message to the House of Representatives, declares the fact, that this question, although decided by the Senate, is to be made the subject of fresh deliberation at Panama!

the option, on our part, of following this foreign advice, or of incurring the resentment of all these Powers, in addition to his own, if we do not act as desired? The States of this Union have a right to send us their opinions; but have we a right to send ministers abroad to get other opinions to overrule, or even to confirm *their* instructions?

But, Mr. President, this is a council for something more than consultation and advice: it is for deliberation and action; it is a council in the sense of the Amphictyonic, that council which Boliyar had in his eye when he declared that the *Isthmus* of Pamama would become more celebrated in history than that of Corinth. The only place in the treaties in which the Congress is mentioned as a council, announces it to be a tribunal for the decision of questions in the last resort, and without the power of appeal. It is to be an *arbitrator** of differences among the States; an *interpreter* of their treaties; a *rallying* point in common dangers; a *council* in great events; a council of war, in time of war,—of peace, in time of peace. What else can this imply but a power to decide, and to enforce obedience? The power to enforce the decision results from the right to decide. So said the *Federalist*, speaking of our Congress of '78. But our Congress was restrained from putting refractory States to the *Ban* because it was limited to the exercise of powers, "*expressly*," granted. This restriction upon the exercise of a power resulting from the nature of the confederation, and held by some to be necessary to its preservation, (*General Hamilton, in the Federalist*) was given as the illustration of the necessity of omitting the words, "*EXPRESSLY delegated*," in our Constitution. The treaties of the Spanish American States contain no such restriction, and the *Ban* of the confederates will be as naturally resorted to by the majority in the Panama Congress, as it always has been by the majority in the Diet of Ratisbon or Frankfort.

Keeping steadily in view the double aspect under which this Congress has been presented to us, we have next to inquire, whether it constitutes "a diplomatic assembly," with power to negotiate treaties in the ordinary form? The President, in his message, evidently holds the affirmative of this inquiry: the two Senators who support him with their voice on this floor, (Messrs. ROBBINS, of R. I. and JOHNSON, of Lou.) maintain the negative. These gentlemen call it, sometimes, a diplomatic assembly, but deny its power to negotiate a treaty. Strange diplomatists, indeed, who cannot do the only thing which confers the title of diplomatic! For complimentary embassies are unknown to these United States; they belong to the crowned heads of the Old World, and with us, the power to negotiate treaties is the essential and indispensable attribute of the diplomatic character. I hold these gentlemen to be in error upon this point, and the President also. The respect which I owe to him and to them requires me to state the grounds of their opinions, with all possible candor, and to advance my own arguments in opposition, with all the diffidence which is compatible with a firm reliance upon their truth.

The articles in the treaties which are relied upon to establish the diplomatic character of this assembly; are 12th and 15th, in the treaty

* See the original treaty, and the true translation.—*Judge-arbitrator*;

between Colombia and Mexico; 15th and 19th, in that of Colombia and Guatemala; 1st and 3d, in that of Colombia and Peru, and 12th and 15th, in that of Colombia and Chili. These treaties were drawn in the Spanish language; the originals are not sent us; and some variations may be detected in the translated versions of the articles referred to. But the variations are the evident effect of loose and inaccurate translation; and, in selecting two articles for the ground work of the opinions which I combat, I shall take those which the gentlemen themselves would be most apt to select.

[*Mr. B. then read articles 12th and 15th in the treaty between Colombia and Guatemala.*]*

ARTICLE 12.—“To strengthen the bonds of future union between the two States, and to prevent every interruption of their friendship and good intelligence, a Congress † shall be formed, to which each party shall send two Plenipotentiaries, commissioned in the same form and manner as are observed towards Ministers of equal grade to foreign nations.”

ARTICLE 15.—“The Isthmus of Panama being an integral part of Colombia, and the most suitable point for the meeting of the Congress, ‡ this Republic promises to furnish all the facilities demanded by hospitality among a kindred People, and by the sacred and inviolable character of Ambassadors”

Upon the first of these articles, it is insisted that the Representatives in this Congress have the name and commission of Plenipotentiaries; and in the second, that they have the privileges of Ambassadors. Upon these expressions have been erected the claim of this Congress to the character of diplomatic. I deny, on the contrary, that the “names” “commission,” or “privilege,” decide the character of the ministers which may wear them. Names are arbitrary, and imposed at will; but the duties to be performed, announce the real officer, and define his character. The name of Consul is known to our Constitution, but it gives no right to the *lictors* and *fascies*, and the person who wears this proudest of the Roman titles, is condemned, by the nature of his duties, to remain in the humble condition of a commercial agent. But to come to the point at once, and to meet the gentlemen with an authority more potent than reason.

Martens lays it down expressly (*book 7, chap. 2. sec. 6.*) that there are—

“Ambassadors and other Ministers who are at the same time Deputies, and also *simple Deputies*, who cannot claim the *rights* of embassy, because they are not vested with the rights of Ministers.” “That many towns in Spain and Italy have a right to send Deputies to their own sovereigns, to which Deputies they give the title of Ambassadors: but they have the title only; they can claim none of the rights of Embassy.” “That Ministers sent to a Congress are sometimes called Deputies; but this name neither adds to, nor takes from the quality of Minister, with which they may be vested at the same time.”

Thus it is shown, Mr. President, that *Deputies* in Spain frequently wore the title of *Ambassadors*, without having any pretension to diplomatic character; that *Ministers* to Congresses might be nothing but *Deputies*, or *vice versa*, that the name of *Minister* would add

* See the originals, and the true translation, at the beginning.

† See the true translation of this word, “*asamblea*, in the original, not “*congreso*.”

‡ Same remark.

nothing to the *Deputy*, nor the name of *Deputy* detract any thing from the *Minister*. Then, we may conclude that these Spanish American States, in giving the name of *Plenipotentiaries* to their *Deputies*, were acting upon a usage with which they were familiar in old Spain; and I will very soon show you, that in giving this name, they neither gave, nor intended to give, diplomatic functions or character.

For this purpose I take up the second of the articles which I have read, article 15th of the treaty last referred to. This article stipulates for the rights of hospitality, and for the inviolability of person, due to the character of Ambassadors. Now, sir, why stipulate for Ambassadorial privileges if they were already possessed? And if these Plenipotentiaries are Ambassadors, they have all the privileges of the character without the officious help of treaty stipulations. They derive them from the law of nations, which covers with the rights, privileges, and immunities of the diplomatic character, every Minister the instant that he is appointed, just as readily and as naturally as the municipal law throws its protection over every child the instant it is born.—To suppose that a treaty stipulation would be necessary in one case would be just as absurd as to suppose that a special act of assembly would be wanting in the other. Why then these treaty stipulations? I answer, because inviolability of person is necessary to all legislators to enable them to do the public business. We have it ourselves, not under the law of nations, but under an article in the Federal Constitution. The members of Congress in Colombia, Mexico, Guatemala, and the other federate states, have it likewise, and in like manner, under articles in the constitutions of their respective countries. Why then this treaty stipulation in behalf of these gentlemen of Panama? Because, exemption from arrest and imprisonment was necessary to the free and regular transaction of their business, and their official character being unknown to the constitution of their respective countries, or to the law of nations; a treaty stipulation became necessary in their behalf; and the inviolability of the ambassadorial character was adopted as a criterion, because it presented the two fold advantage of furnishing an adequate measure of protection, and a rule of measurement known to all the parties.

How will gentlemen escape from this difficulty? The facts are undeniable, and the conclusions irresistible.—It will not do to set down these treaty-stipulations to the account of Spanish American ignorance. The writings, proclamations, and state-papers of the new Powers, place them above the reach of such an insinuation. Besides, they have given us practical proof that they know just as well when treaty stipulations are unnecessary, as when they are not. They have Ministers now here, no less than three of them, and no treaties with us for the rights of hospitality or for the protection of their persons. I repeat it, sir, the conclusion is irresistible! They have protected their plenipotentiaries at Panama with treaty-stipulations, because they are not a diplomatic body, and not entitled to diplomatic privileges under the law of nations; and they have not protected them by like stipulations at this place, because they bear the diplomatic character, and are protected by the law of nations.

This is decisive; I challenge gentlemen to meet it; but a further view yet remains to be taken. These confederates stipulate for *less*, in behalf of their Plenipotentiaries, than public ministers receive without stipulation. They stipulate for nothing but hospitality and inviolability for the persons of their plenipotentiaries; whereas, under the law of nations, this inviolability extends to the minister's wife, his children, and his servants; to his house and his coaches; it makes him independent of the jurisdiction of the country, both civil and criminal, in which he resides; in fine, it gives him the privilege of diplomatic ex-territoriality, and thus makes him, in legal contemplation, *out* of the country in which he is, and *in* the country from which he came. What an immeasurable distance between these rights and privileges, and a claim for food and bodily protection! Yet even this miserable modicum of ambassadorial privilege is limited in its application to the particular spot in which the Plenipotentiary Congress may chance to sit for the time being. While at Panama, Colombia is to give it to them. If forced by the current of events to remove to Guatemala, or to Mexico, Colombia is released from her obligation, and these States assume it. But Ministers, with diplomatic character and privilege, are not only protected in the country to which they are sent, but in every country through which they pass. The sovereign, indeed, to whom they go, is under a more particular obligation to respect and protect them; but they are entitled every where to the rights of hospitality, and to an entire exemption from bodily hurt or harm. If injured or murdered in such passage, the outrage ceases to be an offence against the municipal law of the country; it swells into a crime against the law of nations; it becomes a justifiable cause for war; and the whole civilized world are bound to condemn, if not to avenge it.

[Mr. B. here referred to several historical examples, to illustrate the truth and force of what he advanced. He mentioned the case of the ambassadors of Francis the First, to Venice and Constantinople, who were assassinated on the river Po by the orders of the Governor of Milan, acting under the countenance of the Emperor Charles the Fifth; and that of the French ambassadors, in the time of the Directory, returning from the Congress of Rastadt, and way-laid on the road by a detachment of Austrian huzzars, pulled out of their carriages and cut to pieces with sabres, in the arms of their wives. The first of these events, he said, had given new allies to Francis in his wars with the Emperor; and the second had arrested the current of public indignation, counterpoised the crimes of the Revolution; and, for a while, turned the sympathies of the civilized world in favor of those who were themselves red with the blood of the human race. But he did not mention these examples from any apprehension that our gentlemen of Panama would be murdered on the way, but to show the immeasurable difference between ministers invested with diplomatic privilege, and these plenipotentiaries with their treaty-stipulation for food and bodily protection.]

Having made good this point, Mr. President—having shown, upon indisputable facts, clear reason, and undeniable authority, that this Congress at Panama is *not a diplomatic assembly for the negotiation of treaties*—I will proceed, without now stopping to show what it really is, to the great constitutional question, which results from this position—the competency, not of the President alone, but of the President and Senate united, to send Envoys Extraordinary, and Ministers Plenipotentiary, to such an assemblage.

The power of the President and Senate to send ministers abroad, is derived from the 2d section of article 2d of the Constitution of the United States. The section is in these words:

"The President shall nominate, and, by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers, consuls." &c.

The ambassadors and ministers here intended, are such only as are known to the law of nations. Their names, grades, rights, privileges, and immunities, are perfectly defined in the books which treat of them, and were thoroughly understood by the framers of our Constitution. They are, Ambassadors—Envoys—Envoys Extraordinary—Ministers—Ministers Plenipotentiary—Ministers resident.

The honors due to each of these orders of public ministers, differ with their respective ranks and degrees, but the essential character of each is the same, and the rights of all are equal. In the *first* place, they must all be accredited from sovereign to sovereign. So say all the books, without a solitary exception. In the *next* place, they all possess the diplomatic privilege of ex-territoriality; and this includes exemption from the payment of duties, exemption from local jurisdiction, and the right of inviolability for themselves and families, the houses in which they live, and the carriages in which they ride. In the *third* place, they derive all this from the law of nations; no part of it from treaties and conventions. In the *fourth* place, they usually carry letters of credence, always letters patent, containing full powers, which are to be exchanged with those of the ministers who may treat with them; and, *finally*, they are governed by instructions, and send home the treaties they sign, for ratification or rejection.

Now, let us try our intended ministers by these tests. Let us see whether they possess the attributes, the characteristics, and the essential features of *ministers*, such as are known to the law of nations and to the Constitution of this Confederation. Are they to be sent from sovereign to sovereign? No, Mr. President! They go to an "advisory council," a "committee of public safety." They set out, indeed, from a sovereign; but instead of moving upon a horizontal line, upon that elevated level which knows no descent, they run down an inclined plane, and land themselves in a Congress of Deputies* upon the Isthmus of Panama. Have they the rights, privileges, and immunities, of public ministers? Far from it: for, after yielding to them all that their fellow deputies, fellow counsellors, or fellow committee-men (as the case may be) can take, they will still have nothing but the rights of hospitality, and of personal inviolability. Have they even this under the law of nations? Not at all; but under certain treaties, to which we are not parties, and which can only include our ministers by help of a most liberal construction. Will they carry letters of credence? I presume not: for they will find no sovereign powers on the Isthmus to whom to deliver them. Will they exchange full powers with the Plenipotentiaries of the other powers? I should think not: for these plenipotentiaries will be

* "CONSULTATIVE COUNCIL."—Message to the House of Representatives.

acting under treaties, and our ministers under a constitution and the law of nations. Will they negotiate treaties, and send them home for rejection or ratification? I maintain that they will not; all the Senators who have spoken before me, both friends and foes to the mission, agree with me that they will not; I maintain that they will not and cannot; the President alone seems to think otherwise, probably because he has not had time to study the treaties as we have done. But the fact is remarkable, that no gentleman upon this floor, friend or foe to the measure, supports him in that opinion, and I feel myself justified in dwelling upon the circumstance, and pointing it out to the renewed and continued attention of the Senate.

Tried by these tests, and the diplomatic qualities of our intended ministers fail at every attribute of the character. Spite of the names which are imposed upon them, they turn out to be a sort of deputies with full powers for undefinable objects. They are unknown to the law of nations, unknown to our Constitution, and the combined powers of the Federal Government are incompetent to create them. Nothing less than an original act, from the People of the States, in their sovereign capacity, is equal to the task. Had these gentlemen been nominated to us as DEPUTIES to a CONGRESS, would not the nominations have been instantly and unanimously rejected? And shall their fate be different under a different name? The delicacy of this position was seen and felt by the Administration. The terms "deputy," and "commissioner," were used in the official correspondence up to near the date of the nomination, but as these names could not pass the Senate, a resort to others became indispensable. The invitations and acceptance were in express terms, for "*deputies and representatives to a CONGRESS.*" The nominations to the Senate are wholly different.

[*Mr. B. here called for the reading of the nominations.*]

The Secretary read—

"To the Senate of the United States :

WASHINGTON, 26th Dec. 1825.

—"*In confidence that these sentiments will meet the approbation of the Senate, I NOMINATE Richard C. Anderson, of Kentucky, and John Sergeant, of Pennsylvania, to be Envoys Extraordinary and Ministers Plenipotentiary to the Assembly of American NATIONS at Panama, and William B. Rochester, of New-York, to be Secretary to the Mission.*"

"JOHN QUINCY ADAMS."

Assembly of American Nations! Is this the fact? Are the Nations there? I do not mean to inquire, Mr. President, whether the men, women, and children, who compose the Republics of Colombia, Guatemala, Mexico, Chili, and Peru, have collected themselves in masses upon the Isthmus of Panama—that, sir, would be a vile and contemptible play upon words; but I do mean to inquire, and, "*these ceremonies being burst,*" I do mean to go before the American People for the answer, whether the sovereignty of these nations, in fact, or by representation, is at the Isthmus of Panama? For, unless it is so present; the institution of this mission is, and must be, a breach of our Constitution.

Is, then, the sovereignty of these nations present in fact? I answer, it is not—the thing is impossible; for these States are Republican, and Republics are incapable of exercising the right of sovereign ex-territoriality. That quality belongs alone to Kings and Emperors, who bear about with them, whithersoever they go, the sovereignty of their respective empires. Ministers can be accredited to the sovereignty of a State, wheresoever it may be; and, hence the resort, in this nomination, to the word *Nations*. They can be accredited to nothing below the sovereignty, and hence the necessity of dropping the word *Congress*. A nomination to the *Congress* would have been void, upon its face—the Journal would have shown it; and, peradventure, we, the the People, might have got it into the Supreme Court, “*as a case arising under the Constitution*,” and had it reversed for manifest error. The error would then have been patent, instead of being, as it now is, latent. Gentlemen have evinced their sensibility to this difficulty—they have felt the necessity of support, and have gone to Ghent, and Utrecht for precedents. The references are unfortunate for them and the President—happy for me and the Constitution. The cases are antipodes to each other, in every essential point. Here is a nomination of ministers to nations in gross, at the place where there sovereignty is not, and cannot be. The Ghent nomination was not to the nations at Ghent, nor even to Great Britain at Ghent—but “to Great Britain.” The meeting of the ministers at Ghent, was an incident—a mere affair of arrangement, and constituting no part of the nomination. There, and at Utrecht, the Plenipotentiaries were accredited to sovereign powers—met their representatives, under the law of nations, and for a purpose strictly diplomatic—that of negotiating treaties.

Doubtless there may be nominations to sovereigns without their dominions. The late Congresses in Europe furnish examples of the fact; but they are limited to Kings and Emperors, possessing the quality of sovereign ex-territoriality. But even to these a minister could not be accredited in mass. He must have separate letters of credence to each, and separate full powers to treat with each. Reason tells us this; for each sovereign has the right to receive and to reject ministers—to treat or to let it alone. Authority tells us the same thing; and, as authority is often more potent than reason, and this may be one of the cases in which it is so, let us look at the books.

[Here Mr. B. read—

“One letter of credence may serve for *two* Ministers, sent at the same time, if they are both of the same order. Sometimes, on the contrary, *one* Minister has *several* letters of credence. This happens when he is sent to *several* sovereigns, or to *one* sovereign, in *different* qualities.” “The Ministers sent to Switzerland are often charged with more than *four* different letters of credence. So it is with those sent to the Emperor, to the circles of the Empire,” &c.] *Martens*.

It is the same with the letter of *full powers*. There must be as many as there are sovereigns to be treated with; the exchange of these must be mutual and simultaneous; each Minister judges for himself the full powers of the other. Yet our intended Ministers to Panama are nominated to the “nations” in mass; the nomination will govern the commissions, and the commissions will govern the letters of credence and of full power.—By consequence the credentials and

the full power will be presented to a Congress—to an organized body—and passed upon by it. Peradventure a committee will be raised upon their papers; the Congress vote upon them; the President announce the result; a clerk write it down; and a door-keeper let them in! What a process for the reception of ambassadors! Not so at Ghent. There the ministers of the two powers met upon the footing of equality. The full powers of each were mutually and simultaneously exchanged: (*See the Preamble to the Treaty.*) Each judged for himself; and from this equality, and this right of reciprocal decision upon each other's powers, there can be no exception except in one single case, a case which did exist at Ghent, and does not exist at Panama; it is the case of a negotiation opened under the auspices of a *Mediator*, to whom the full powers of each may, and ought to be, submitted, if they disagree. Our Ministers then must be accredited to *each* of the nations supposed to be at Panama; they must bear full powers to treat with *each* of their plenipotentiaries; these again must have full powers to treat with *each* other, and with *us*; and these powers must be reciprocally exchanged all around.* So it was at Ghent, so at Utrecht, so at Westphalia, so at every Congress of plenipotentiaries for the negotiation of treaties of which history gives us any account.

The sovereignty of these nations not being, in point of fact, at Panama, the next inquiry is, whether it is there by representation?

This is a thing possible. Ministers, known to the law of nations, *may* represent the sovereignty of their nations at any point upon the globe. They *may* come from the four quarters of the globe and form a diplomatic assembly. But is this Congress at Panama, an assembly of that description? I maintain that it is not; and in maintenance of this opinion, I bring up and enforce again, the circumstance of their creation under treaties; their limited privileges; and their depend-

* The President, in his after Message to the House of Representatives, has mentioned, as a precedent for this Mission to Panama, the one which was instituted in our own country soon after the close of the Revolutionary war, to the principal powers of Europe. A reference to the history of that mission has furnished me a pointed authority against this nomination to Panama, and in favour of the position which I maintained in the Senate.

The ministers sent out on that occasion were Messrs. Adams, Franklin, and Jefferson; the Powers to which they were commissioned, were Russia, Germany, Prussia, Denmark, Hamburg, Great Britain, Spain, Portugal, Genoa, Tuscany, Rome, the two Sicilies, Venice, Sardinia, and the Ottoman Porte. But they did not carry a letter of credence and full powers to these nations in the gross—to the whole of them in mass—but a credential and a full power to each, by name.

Candour, however, requires me to say, that there was, in former times, when the knowledge of geography was less perfect than at present, a species of universal ministers, or knight-errant ambassadors, carrying general letters of credence, and general full-powers, and bearing commissions addressed "*Ad omnes Populos.*" The name of this obsolete order, and their vocation, has been brought to mind by the passages in the same second message, in which this mission to Panama is supposed to be the means of dispensing the "promised blessings of the Redeemer," improving "the condition of man upon earth," and promoting the "welfare of the whole human race." But the nomination of Messrs. Anderson and Sergeant is not quite up to this universal mission; it does not read "*Ad omnes Populos,*" (*To all People,*) but, *ad omnes gentes Americanas*, (to all the American nations, AT PANAMA!) ergo, it is still without a precedent in the annals of diplomacy;

ence for these upon treaty stipulations. I will then go forward and show what this Congress is. In doing this, I shall follow the example of the Senator from Rhode Island, (Mr. Robbins,) and improve a little upon it. He looks to the treaties which create this Congress, for its character, and he leaves out of view all that has appeared in reviews, proclamations, and newspaper essays. In this he acts like a Senator—like a statesman. I shall imitate him in looking to the same treaties, and in leaving out of view so much of the President's Message, and so much of the same loose authorities, as differ in any degree from the terms of the treaties; and I shall improve upon his example, by adding to the catalogue of excluded authorities, so much of the Secretary's communications, and of the letters of the Colombian, Mexican, and Guatemalan Ministers, as vary from the same standard. In the absence of these treaties, this message, and these communications and letters would have governed us; for they would then have been the highest evidence in our possession; but, in the presence of the treaties, they are useless; for they signify nothing when they agree with them, and must be rejected when they differ from them.* And here, Mr. President, I shall admit that I was put upon this track by the words of wisdom which fell, in the first days of this debate, from that venerable Senator from North Carolina, (Mr. Macon,) who, I am proud to say, permits me to call him *friend*, and am still prouder to know, has been the friend of me and mine through four generations. This venerable Senator said, that this confederation of Spanish American States, and their Congress at Panama, was to *them* what the confederation and Congress of the Revolution was to *us*. This remark struck me, and set my mind at work. I determined to analyze the two confederations, and their Congresses, and I have done so. The result is in my hand, (*showing a paper*,) and I derive confidence in its correctness from seeing that the Senator from Maine, (Mr. Holmes,) and the Senator from New-Jersey, (Mr. Dickerson,) without any concert with me, or even knowing what I was about, have, in part, made the same analysis, and arrived at the same conclusions. Their labours not only fortify me in the strength of my position, but relieve me from a part of my own. For, after what they have said, I will do no more, in this place, than to read from my notes the analysis which I have made of these Congresses and confederations, respectively.

[Mr. B. then read from his notes, as arranged under appropriate heads, and in parallel columns, the analysis which he had made of the object of the two Confederacies, and the powers and duties of their respective Congresses.]

THE ANALYSIS.

Style of the two Confederacies

English American States.

Articles of confederation and perpetual union between the States of New Hampshire, Massachusetts Bay, Rhode Island, &c.

Spanish American States.

Treaty of perpetual union, league, and confederation between the Republics of Colombia, Guatemala, Mexico, &c.

* The treaties were not communicated with the Message recommending the Mission. The message came in, December 26th. The treaties were called for, January 4th, by Mr. Macon, as chairman of the Committee of Foreign Relations; and were sent in, January 9th.

Objects of the Confederates.

To make a firm league of friendship for the common defence and general welfare, and to bind themselves to assist each other against all invasions and attacks whatsoever.

To make a firm and constant league of friendship for the common defence, and to bind themselves to aid each other with land and sea forces in repelling all attacks whatever.

Mode of accomplishing these objects.

By a Congress composed of deputies from each State.

By a Congress composed of plenipotentiaries from each State.

Number of Deputies and Plenipotentiaries.

Not less than two, nor more than seven; from each State.

Two from each State.

Privileges of Deputies and Plenipotentiaries.

Deputies to be protected in their persons from arrests and imprisonment, during the time of their going to and from, and attendance on Congress, except for treason, felony, or breach of the peace; and not to be questioned in any other place for what was said in Congress.

Plenipotentiaries to have the rights of hospitality in the State in which the Congress sits, and to receive from such State the protection which is due to the sacred and inviolable character of their persons.

Place of holding the Congress.

At Philadelphia, in the State of Pennsylvania, one of the confederate States

At the Isthmus of Panama in the Republic of Colombia, one of the confederate States.

Right of Removal.

The Congress may adjourn, and remove to any other place within the confederated States.

The Congress may remove to any other place within the Republics of Guatemala or Mexico, whenever the events of war may require it, or the majority of the States may so decide.

Powers granted to the Congress.

To make peace and war; to send and receive ambassadors and other public ministers; to conclude treaties and contract alliances; to regulate commerce; coin money; emit bills of credit; fix the quotas of troops or money which each State shall furnish; to make requisition for such quotas, to be the last resort on appeal in all disputes and differences between States, &c. &c. &c.

To fix the quotas in naval and military forces, or their equivalents in money, which each State shall furnish; each State bound to furnish the quotas or pay the equivalents so fixed; to serve as a council in great conflicts, as a rallying point in common dangers, as a faithful interpreter of their public treaties, and as an umpire and conciliator in their disputes and differences.

Privileges of Citizens.

The citizens of each State to have free ingress and regress in any State; to enjoy therein the privileges of trade and commerce; to be liable to no other duties, restrictions, or impositions, than those to which the inhabitants of the same State are subject and liable.

The citizens and inhabitants of each State to have free entrance to, and departure from, the ports and territories of the other; to enjoy therein all the civil rights and privileges of traffic and commerce which belong to the citizens of the same State: to be subject to the same duties and restrictions to which the inhabitants of the State are subject.

Fugitives from Justice.

Traitors, felons, and others guilty of high crimes and misdemeanors, fleeing

Persons guilty or accused of treason, sedition, or other grievous crime, flee-

* To serve them for a council, &c. See the true translation.

from one State into another, shall be delivered up to the Government from which they fly, to be dealt with according to law.

ing from justice, and found in the territory of any of the States, shall be delivered up to the offended Government upon demand.

Admission of other States.

Canada, acceding to this confederation, and joining in the measures of the United States, shall be admitted into, and entitled to all the advantages of this Union.

The contracting parties oblige themselves to interpose their good offices with the other *ci-devant* Spanish States to induce them to unite in this compact of perpetual union, league, and confederation.

Reserved Powers.

Each State reserves its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not, by these articles of confederation, expressly delegated to the U. States in Congress assembled.

This compact of union, league, and confederation, shall not affect, in any manner the exercise of the national sovereignty of the contracting parties, in regard to their laws, and the establishment and form of their respective Governments, nor in regard to their relations with other nations.

The closeness of this parallel, continued Mr. B. is full proof that the Congress of Panama is copied after the Congress of our Confederation of '78. The objects, powers, and duties of each, with one essential difference, are the same, and the words as nearly identical as could be expected after the double process of translating English into Spanish, and Spanish back into English. But, notwithstanding the general conformity, they differ in a leading feature, and this difference is fatal to the diplomatic pretensions of the Congress at Panama. Let us display it.

Difference of Powers.

The English American Congress had power to declare war and make peace; send and receive Ambassadors and other public Ministers; to make treaties, and conclude alliances; to regulate foreign commerce; and to regulate all the foreign relations of the confederated States.

The Spanish and American Congress has—

First: No grant of any of these powers.

Second: A restriction against the exercise of them.

Third: A grant to *interpret* treaties.

Fourth: No grant to *make* them.

This, Mr. President, is demonstration. It is mathematical. The conclusion proclaims itself, and argument would weaken it.

But besides the subjects submitted to the decision of the Congress, there are other matters agreed upon by the confederates themselves, inserted in their treaties, and made fundamental articles of the Confederation. These, of course, cannot be affected by the acts of the Congress. Among them are four, highly material to be considered in the institution of this mission, three relative to the subject of commerce, and one in reference to treaties of peace with Spain. These articles stipulate for—

1. An equality of duties and port charges among the confederates.
2. Leave to refit and repair vessels, take shelter, enlist crews, and increase the armament of vessels in the ports of each other.
3. An extension of maritime jurisdiction to the privateers of each.

other, for the purpose of preventing abuses upon their own commerce, and that of neutrals.

4. That neither shall compromise its independence in any treaty of peace with Spain, nor pay any price for the acknowledgment of its independence by the mother country.

From this analysis it results—

1. That the Congress at Panama is a Congress of deputies, with full power over the limited number of subjects which are committed to them.

2. That these subjects resolve themselves into two classes: those relating to the external defence, and those relating to the internal tranquillity of the confederate States.

3. That the Congress can only act upon the affairs of the confederates.*

4. That it is to be an organized body.

5. That its duties will sometimes be *judicial*,† as in the interpretation of treaties; sometimes *legislative*, as in fixing quotas and equivalents; sometime *executive*, as in planning military campaigns; but never *diplomatic*, because it is forbidden to affect the foreign relations of the confederates, and cannot even treat with Spain for a general peace.

But, while I call it a Congress, as it is named in the treaties,‡ I deny its similitude to the diplomatic congresses known to the law of nations. I pronounce them to be antipodes to each other in every essential attribute. The diplomatic congress meets for the sole purpose of treating for peace; this for the main purpose of carrying on war, and without the power of concluding a peace! The diplomatic congress is composed of plenipotentiaries from all the parties at war; this is composed of the parties on one side only. The diplomatic congress sits temporarily, for the accomplishment of a single object: this at Panama, is to sit for ever, and for the accomplishment of various and interminable objects. The diplomatic congress is incapable of organization; this is to be organized. The diplomatic congress can do nothing but negotiate treaties; this is to plan campaigns, fix quotas, assess equivalents, arbitrate differences, interpret treaties, and make none. The diplomatic congress meets on neutral ground; this sits on the ground of one of the belligerent parties. *That* has a mediator; this none. In *that*, all the negotiators have the commission of plenipotentiary *only*, to avoid questions of ceremonial and of precedence; in *this*, our ministers appear clothed with the rank of Envoys Extraordinary, and Ministers Plenipotentiary, and will take rank of the others, which may give rise to curious and serious questions among the inviters and the invited.

* See the true translation. The General Assembly (not Congress) is to serve them, the Spanish American confederated States, for a council, &c. &c. &c. in their disputes and differences: in the interpretation of their treaties as a judge-arbitrator, &c.

† This was said before I had seen the original treaty, which proves the judicial character, and even uses the word *Judge*.

‡ If I had seen the original I should have had no occasion to combat the argument arising from the name. See the true translation prefixed to the speech. It is not named "*Congress*."

Mr. President, I must be permitted to take a closer view of this Congress, under its character of an organized body. It is admitted, on all hands, that it is to have organization and rules. Now, this is a thing impossible in a diplomatic assembly. The ministers in such an assembly represent **sovereign powers**, and cannot be organized. We had as well undertake to organize kings and nations. The ministers can have no rules of action, for their personal deportment, but those manners of gentlemen which they are presumed to possess; and none for their official conduct but such as are contained in their own instructions. The idea of organization is fatal to the diplomatic pretensions of this assembly. What is organization? It is the disposition of the parts to make them subservient to each other; it subjects the whole to one will, or to one principle of action; it reduces this Congress to a unit, to one party, deciding for all, with one voice. A diplomatic assembly, on the contrary, is multiplicate; it consists of as many parties as there are Powers represented, each independent of the other, each making the best bargain he can for his own side. How will our ministers act with such a body? They must either become parts of its organization, or not become parts of it. Take either horn of the dilemma. In the first event, they make us parties to the confederacy, and bind us by the voice of the body. Well, it is agreed, all round, that this will never do. Then, try the other. Let our ministers stand off, become no part of the body, but undertake to negotiate with it. This is impossible: for the Congress is not sovereign to receive ministers, nor can it; like our Congress of the confederation, appoint ministers to treat with them, nor treat as *two* parties: for the body will contain five parties, with only one voice, and we shall present a single party, with two voices. One will have to speak through a President or Secretary; the other, in their own persons. In short, Mr. President, the simple idea of organization explodes every pretension of this Congress to the character of diplomatic.*

Sir, it is vain to endeavor to cover up this thing with mis-nomers and nick-names. It is a *Congress*, of *deputies*, in the ordinary sense of the terms, and was so described by all the parties, until it was seen that, under these names Messrs. *Anderson* and *Sergeant* could never obtain admission into the Senate, much less a passage through it. Behold the proof! Here it is:

FIRST PROOF.

Letter from Mr. Clay to Mr. Salazar, November 30th.

"I have the honor to acknowledge the receipt of your official note of the 3d inst. communicating a *formal invitation* from the Government of Colombia to that of the United States, to send *deputies* to the contemplated Congress at Panama," &c. &c. &c.

* This question certainly deserves to fix the attention of statesmen. The reception of ministers, by an organized body, not sovereign, is yet to find its precedent in the annals of the world. The Congress of our confederation received ministers from foreign nations, because it was sovereign; but it did not treat with them, because it was an organized body. It appointed ministers to treat, individuals to act with individuals, and this it could do, because it was sovereign. But the Congress at Panama cannot appoint ministers to meet ours, because it is not sovereign; nor treat face to face, because *one is an organized body, and the other individuals.*

SECOND PROOF.

From same to same. Same date.

"It would have been better, perhaps, if there had been a full understanding between all the American Powers who may assemble by their representatives, of the *precise* questions on which they are to deliberate, and that some other matters respecting the powers of the *deputies* and the organization of the *Congress*, should have been distinctly arranged, prior to the opening of its deliberations," &c.

THIRD PROOF.

Mr. Clay to Mr. Obregon, November 30th.

"I have the honor to acknowledge the receipt of your official note of the 3d instant, communicating a *formal invitation* from the Government of the United States of Mexico to that of the United States, to send *deputies* to the contemplated Congress at Panama," &c. &c. &c.

FOURTH PROOF.

From same to same. Same date.

"It would have been better, perhaps, if there had been a full understanding between all the American Powers, who may assemble by their representatives, of the precise questions on which they are to deliberate; and that some other matters respecting the powers of the *deputies* and the organization of the *Congress*, should have been distinctly arranged, prior to the opening of its deliberations," &c.

Yes, sir, "deputies to a Congress" is the invitation and the acceptance. It is in vain to endeavor to cover it up with the drapery of names and titles. The thing stands before you, stripped and naked, in all the nudity, if not in all the beauty, of a Grecian statue. Words can neither hide nor alter it. It is a thing unknown to the Constitution, and the Constitutional question then recurs upon it—can the President and Senate send the nominees, as public ministers to this Congress upon the Isthmus of Panama? I contend that they cannot; neither *to* it, because it is not sovereign to receive them, nor diplomatic to negotiate with them; nor *into* it, for that would make our envoys a part of its organization, and ourselves parties to the confederacy; nor to act *with* it, because the Congress will act as an organized body, and our deputies as individuals. It is in vain to affect indifference towards these difficulties. They are seen and felt by those who conduct this affair; and the almost utter impossibility of managing it, is betrayed by the Babylonian confusion of terms and ideas which pervade their councils. Behold the effects of this confusion. The deputies to the Congress are called by all sorts of titles—agents, commissioners, representatives, plenipotentiaries, and finally promoted, in the President's nomination, to envoys extraordinary and ministers plenipotentiary! The Congress itself is equally the subject of a vague and contradictory nomenclature—sometimes a congress; sometimes a diplomatic assembly, without power to negotiate treaties; once a Cortes; now an advising council; then a committee of public safety; and, at last swelled by the President into any assembly of nations!* Then, as to the

* And, from this point of culmination, this position in the zenith, we presently behold a perpendicular plunge—a fall from heaven to earth—from an ASSEMBLY OF NATIONS to a "consultative council."—(*Message to H. R.*)

powers and duties of the deputies themselves, what contradictions upon these points ! Sometimes they are to be giving advice ; sometimes to be consulting ; sometimes negotiating treaties, and sometimes not ; sometimes they are to “ *settle* ” the unsettled points in the laws of nations ; yea, sir, to give the law to the two Americas, and Europe, Asia, and Africa to boot ! Then they are to do nothing in the world but make bows and compliments, and walk in and out, like our territorial delegates, and exhibit the extraordinary spectacle of lobby ministers plenipotentiary and lobby envoys extraordinary ! And, with all these high and low pretensions, they are to be worked through this chamber upon the plea of an innocent operation ; upon the recommendation of an old woman’s medicine, that they will do no harm if they do no good.

I trust, Mr. President, that it is now made clear, that the proposed mission is unknown to the law of nations, and to the Constitution of this country ; but, as it may, nevertheless, be sent, it becomes my duty to proceed upon that supposition, to follow it to Panama, and to show that its objects are, in some respects, already accomplished, in others, unattainable, in others, inexpedient—that we have nothing to expect from it but a heavy item of expense, some unpleasant apologies to foreign nations, the risk of getting into difficulties with the new Republics themselves ; and that every desirable and attainable object would be better accomplished by an agent or commissioner, without diplomatic character, with little expense to our Treasury, and without harm to our Constitution.

Pursuing these Ministers to Panama, we have next to inquire, what are the objects of interest to us, which are expected to be accomplished by them at that place ?

The President, in his message, has enumerated several, at the head of which stands the item of commerce. Upon this subject, he expects to establish—1st. The doctrine, that free ships make free goods. 2d. The restrictions of reason upon the extent of blockades. 3d. The “ *consentaneous* ” adoption of principles of maritime neutrality. 4th. The principles of a liberal commercial intercourse.*

* A fifth object to be accomplished by sending Ministers to Panama, is disclosed by the President in his message to the House of Representatives, and *not disclosed in his message to the Senate*, is the abolition of private war upon the ocean—that is to say, to abolish privateering. In his message to the House of Representatives, he places this object in high and bold relief. He speaks of it in the following animated and and impassioned strain :

“ If it be true that the *noblest treaty of peace* ever mentioned in history is that by which the Carthaginians were bound to abolish the practice of sacrificing their own children, *because it was stipulated in favor of human nature*, I cannot exaggerate to myself the *unfading glory* with which these United States will go forth in the memory of future ages, if, by their friendly counsel, by their moral influence, by the power of argument and persuasion alone, they can prevail upon the American Nations at Panama, to stipulate, by general agreement among themselves, and so far as any of them may be concerned, the *perpetual abolition of private war upon the ocean*.”

“ It will be within the recollection of the House, that immediately after the close of the war of our Independence, a measure closely analagous to this Congress of Panama, was adopted by the Congress of our Confederation, and for purposes of precisely the same character. Three commissioners, with plenipotentiary-powers, were appointed to negotiate treaties of amity, navigation and

The first question which presents itself, Mr. President, is one of power in the Congress to treat of these subjects at all. It seems to me that it has no power to touch them. They belong to the "Foreign Relations" of the confederates, and these it is forbidden to the Congress to "affect in any manner," as shown in the analysis of its powers. The article to that effect is the same in every treaty. It is article 17th, in the treaty between Colombia and Chili; 6th, in that of Colombia and Peru; 18th, in that of Colombia and Guatemala; and 17th, in that of Colombia and Mexico. It is in these words:

"This compact of union, league, and confederation, shall not affect, in any manner, the exercise of the national sovereignty of the contracting parties, in regard to their laws, and the establishment and form of their respective Governments, nor in regard to their relations with other Governments."*

Here are three restrictions upon the powers of the Congress:

1. Against interfering with the municipal laws of the confederates.
2. Against interfering with their forms of government.

commerce, with all the principal powers of Europe. They met, and resided for that purpose about one year at Paris; and the only result of their negotiations at that time, was the first treaty between the United States and Prussia—memorable in the diplomatic annals of the world, and *precious* as a monument of the principles, in relation to commerce and maritime warfare, with which our country entered upon her career as a member of the great family of independent nations. This treaty, prepared in conformity with the instructions of the American plenipotentiaries, consecrated three fundamental principles of the foreign intercourse which the Congress of that period were desirous of establishing. First, equal reciprocity, and the mutual stipulations of the privileges of the most favored nations in the commercial exchanges of peace; secondly, *the abolition of private war upon the ocean*; and, thirdly, restrictions favorable to neutral commerce upon belligerent practices."

Upon this disclosure and animated appeal to the people, through the House of Representative, I have two remarks to make:

1. That Mr. Adams ought to have disclosed this object to the Senate; and cannot be excused for the omission to do so, except upon the ground that he did not think of it when he was stating the objects of the mission to *them*.

2. That Mr. Adams, himself, in his quality of Minister to Prussia, on the 11th day of July, in the year 1799, expunged the aforesaid most "*noble*," most "*glorious*," add most "*precious*," stipulation from our treaty with that Power.—(See Article 23d of the two treaties with Prussia; *Laws of the United States*, pages 241 and 259. The political pamphlets of the day, and the memory of individuals, contemporary with the event, assert that great applause was bestowed upon the young negotiator, Mr. J. Q. Adams, for his success in getting this stipulation expunged.

With respect to the value of the stipulation itself, I look upon it to have been of about as much consequence as if it had been made with the King of Prussia's neighbor, "*the King of Bohemia*:" who, according to *Tristram Shandy*, had neither sea-coast, nor sea-ports, nor ships; and with whom, of course, treaty-stipulations in favor of "*human nature*" upon the ocean, would be about as availing against "*Orders in Council*, and *Berlin and Milan Decrees*," as if they had been made with the *King of Ashantee*, or half-a-dozen young nations at Panama, who have, indeed, a plenty of sea-coast, but who for a long time, must be as destitute of naval force, and as incapable of regulating public or *private* war upon the ocean, as the King of Bohemia, the King of Prussia, or the King of Ashantee.

As to Mr. Adams' diplomatic merits in the premises, I look at them in this wise: Either he was wrong at Prussia in 1799, or wrong at home in 1826.—His admirers may divide as they please, but divide they must.

* This is sufficient for the opponents of the mission; but for a more exact translation, see the triplicate columns.

3. Against interfering with their foreign relations.*

The last of these restrictions ought to prevent the Congress from touching the commercial relations of the United States, with any or all of the Confederate Powers. But, admitting that this restriction had not been imposed, would it then have been the part of a wise and prudent policy to open the subject of our commercial relations in the Congress of these Confederate Powers? I think not, Sir, for many reasons: and, first, because we have already so nearly all that we want from each of these Powers, respectively, that it would be impolitic to put to stake the much which we have in possession, for the chance of gaining the little which we have not yet acquired. With Colombia we have a treaty, ratified by ourselves about sixty days ago, containing every stipulation that we can possibly ask for: the flag, to cover the property; free ships, to make free goods; the trade of the two countries to be placed on the liberal basis of perfect equality and reciprocity; liberty of conscience, and the right of worship allowed to our citizens, and the privilege secured to them of being buried in decent and suitable places; and, finally, the crowning stipulation, that, if a better treaty should be made with any other power, all the advantages of it shall immediately accrue to the United States, in the same manner as if it had been made with us. This is certainly covering the whole ground for which we went in the mission to Europe, at the close of the Revolutionary war—it is gaining all that can be got from Colombia. Then for Guatemala. We have a treaty with her, ratified likewise by ourselves, at the present session, in which every point is secured which is contained in the one with Colombia, even to the stipulation for contingent advantages, in the formation of better treaties with other Powers. With Buenos Ayres and Chili we had no treaties, positively signed, at the date of the last advices; but our Ministers were in negotiation; and, on the 28th of September last, our Government was officially informed that these negotiations were probably concluded, and treaties signed by that time, which would contain every stipulation which had been put into the treaty with Colombia.—(See Mr. Poinsett's letter of that date.) With Peru we have neither treaty nor negotiation; but it is understood that a *Charge d'Affaires* will soon be sent to that country, and, unless he goes to make a commercial treaty, I presume he will go *uncharged* with any *affairs* at all. Mexico, alone, remains to be considered. With her we have interchanged Ministers, and from our Plenipotentiary "*near*" her Government, we are informed, under date of the 13th and 28th of September last, that every article in the proposed treaty was adjusted to his entire satisfaction, *save one*, and that *one* a proposition, on the part of Mexico, to reserve the right of granting some commercial privileges with the other American States, formerly Spanish, which would not be granted to other Powers. The last intelligence from our

* The Committee of Foreign relations, in the House of Representatives, in a report, professedly replying to objections to the Panama mission, which objections had not, at that time, been made any where but in the Senate, has quoted the first and second of these restrictions, and omitted the third. The omitted clause, I presume, was deemed by the Committee to be immaterial and not worth inserting; but, in my opinion, the insertion of it would have annihilated their report.

minister, left the negotiation hanging upon this single point, with a peremptory declaration, on his part, that he would never agree to it. Since then, the Message of the Mexican President to his Congress, has been seen and read by us all, in which he speaks of this treaty being so nearly concluded, as to enable him to say that it would be laid before Congress in a few days! Then take this matter as you will; in the first place, it is highly probable that we have, before this time, treaties with all these Powers, containing every stipulation that we wish. Certain it is, that we have such with Colombia and Guatemala, *two out of three* of the Powers that have invited us to Panama. It is almost certain that we have the same from Mexico, the remaining Power that invited us—highly probable that we have just what we want from Buenos Ayres and Chili; and, if we have not, it would seem like a sleeveless errand to go to Panama to get it, because Chili has not invited us to meet her there! And Buenos Ayres has, herself, refused to go there! Neither has Peru invited us, nor can it be presumed that, without the expectation of seeing *us* at Panama, either this power or Chili has given full-powers to their plenipotentiaries to treat with us at that place. Shall we, then, voluntarily incur the hazard of losing all that we have secured from these nations separately, by opening fresh negotiations with them in a body? Shall we run the risk of seeing Colombia, Guatemala, Peru, Chili, and the rest of them, innoculated with this Mexican doctrine—a doctrine so well calculated to become infectious, of granting to each other peculiar privileges to the exclusion of us? Is not a bird in the hand worth two in the bush? Are not four birds in the hand worth the feather of one in the bush?

But let us look further. Who is the negotiator contending with our Minister in Mexico for this doctrine of exclusive privileges? Is it not *Don Ramos Arispe*? And who is Don Ramos? A Catholic Bishop; (and I do not mention this in derogation of his character, but for a purpose which will show itself in the proper place;) a Catholic Bishop, and one of the Mexican Plenipotentiaries to the Congress at Panama. Yes, Sir; the negotiator selected to contend with Mr. Poinsett in Mexico for this doctrine of reserving peculiar commercial privileges among the new States, because they are akin to one another, and we are not akin to them—this negotiator is one of the plenipotentiaries appointed to meet our Ministers at Panama! And is there nothing in this coincidence? No visible sign about it, of the determination of Mexico to contend for the same thing in this Congress? To those who think so, the perusal of Mr. Poinsett's letters of the 13th and 28th September, will show them their error. They will there discover that Mexico is "obstinately bent" upon carrying this point; that she looks to the Congress at Panama as the place at which she can carry it; and to the sensible answer of Mr. Poinsett, that, *while our treaties with the other States continue, THEY cannot enter into this arrangement with Mexico*, the negotiators of this Power reply, that these treaties may be dissolved, and even mention *war* as a means of dissolving them! But these passages are too material to be paraphrased; let us have the information of Mr. Poinsett in his own words:

Mr. Poinsett's letter to Mr. Clay, September 28, 1825.

EXTRACT.

"I replied, that this exception could now avail them (the *Mexicans*) nothing, as our treaty with Colombia, and those probably by this time concluded with Buenos Ayres and Chili contained *no* such provision. The Plenipotentiaries of Mexico hastily remarked, that a *war* might dissolve any one of those treaties, and, in such an event, they thought Mexico ought to possess the power to evince her sympathies in favour of either of the American nations which had formerly been Spanish. To this observation. I replied that I considered this argument conclusive why the United States should not accede to the insertion of such a provision in the treaty; that I regarded a *war* between the United States and any of the other Republics of America, as a very remote and improbable event; but that I never would consent by treaty, to place the former in a less favourable situation than their enemies, if, unfortunately, those Republics should ever become so."

Now, Mr. President, put this question upon either foot. Let it be assumed that Mexico has concluded a treaty with Mr. Poinsett before this time; or admitted that she has not. In the former case, it would be idle to go to Panama to conclude it over again; in the latter it would be the extreme of imprudence to refer the subject to the Congress at Panama; because we should then have to open all our treaties with the other Powers upon the same point, and to run the risk of a general combination of those States against us. The improvidence of doing this *now*, is even greater than it would have been when Mr. Poinsett wrote; for, since that time, Guatemala has concluded her treaty with us, upon our own terms. Mexico is left alone, and *must* yield if we stand still and do nothing; for it is impracticable for her to grant these exclusive privileges to the other States, until they are loosed from their treaties with us, and free to grant them back again to her. Why, then, spoil our own market by a childish over eagerness to trade?

- So much for the item of commerce: enough, I think, Mr. President, to prove two things; *first*, that the Congress at Panama, has no power to treat upon the subject at all; and, *secondly*, if it had, that it would be unwise and improvident in us to go there to treat about it.

But the President proposes another object in the same paragraph of his message—which relates to commerce, and somewhat in connexion with that subject. It is the establishment of certain unsettled and disputed principles of national law.

I hold it to be a sufficient answer to this suggestion, to refer again to the third restriction upon the powers of the Congress; the one which forbids that body to touch the subject of foreign relations. But there is another point of view in which to look at this suggestion, and to arrive at the same conclusion. The law of nations is either *natural*, derived from the law of nature; or *conventional*, derived from treaties; or *customary*, founded upon usage. The introduction of any new principle into the body of national law, or the restoration of any old principle to it, in either the *natural* or the *customary* law, will be out of the question at Panama; and the alterations made by *treaties* are only binding upon the parties to the treaty. (*Vattel, section 24 of the Introduction.*) And even without a book to tell us this, natural reason would seem to say, that half a dozen of the youngest and weakest nations upon earth, collected in a

corner of the world, would not be able, by any agreement among themselves, to give a new code of national law to the oldest and most powerful.

The subject next mentioned in the Message, is that of religion. The President expresses an opinion that our Ministers at Panama can be instrumental in effecting a change in the Constitutions of the new Republics, favorable to the cause of religious liberty. He says

"Some of the Southern nations are, even yet, so far under the dominion of prejudice, that they have incorporated, with their political constitutions, an exclusive church, without toleration of any other than the dominant sect. The abandonment of this last badge of religious bigotry and oppression, may be pressed more effectually by the united exertions of those who concur in the principles of freedom of conscience, than by the solitary efforts of a Minister at any one of the separate Governments." &c.

This, Mr. President, is the declaration of a direct intention to interfere with the internal affairs of the Spanish American States. The President proposes to effect an amendment in their "political constitutions," in one of their fundamental and most valued articles. This is an act which he has no right to do, and which our intended Ministers cannot attempt, without giving just cause of offence. I admit that the President may recommend to *us* an amendment in *our* Constitution, and I should be glad to see him do so in a certain particular; but I deny to him any right to propose amendments to the Constitutions of foreign nations. It is true, sir, that he proposes the mildest mode of operation, that of "*moral influence*:" but even this is forbidden by the law of nations. The books forbid it expressly. Listen to Vattel:

"It is the business of the nation alone to judge all disputes relating to its Government. . . . No foreign power has a right to interfere. . . . If any intrude into the domestic affairs of another nation and attempt to INFLUENCE its deliberations, they do it an INJURY." (*Book 1. chap. 4, sec. 37.*)

Advice without request, is Mr. President, intrusive, and offensive alike to nations and to individuals. This is the case on subjects of ordinary policy; how much greater the injury, how much deeper the offence, when the interference touches their religion! All sects are sensitive upon this point, and Roman Catholics above every other. The Catholic is the mother church; and, whether right or wrong in their belief, every individual belonging to it reposes upon the truth of its doctrines with an unwavering and perfect faith. What, then, will be the fate of our Ministers, if they undertake to "*press the abandonment*" of a fundamental article of that religion, now "*incorporated with the Constitutions*" of the new Republics, and treat it as a "*badge of bigotry and oppression*?" The Committee of Foreign Relations have hinted at their possible fate, and I will now improve upon their suggestion, and back it with the books. The committee have suggested that the invitation given, would be withdrawn as soon as our ministers unmasked their designs upon the religious establishments of the new powers; I will suggest further, that, in addition to this withdrawal of invitation, they might be ordered to quit the territories of the confederates as disturbers of the public peace.

[Here Mr. B. read several passages from Vattel, to shew that an ambassador is not allowed the public exercise of a religion not tolerated by the law of the land; that he would be considered as a disturber of the public peace, and might be ordered out of the country, for such an offence.]

And continued—If, then, the public exercise of a religion, not tolerated, would be an offence in an Ambassador, for the commission of which, all the high privileges of his character could not save him from expulsion, what else, in addition to this penalty, might he not expect for attempting to create that universal disturbance which would result from the commission of the same offence by all descriptions of persons, foreigners as well as citizens? And to whom, sir, is this proposition to be addressed? Who is it that are to be told that they are “under the dominion of prejudice?” Who is it that are to be charged with “bigotry and oppression?” It is an assembly of Roman Catholics, one of them, at least, a Bishop in full pontificals, bound to preach, as the others are bound to believe, that “without the pale of the Roman Catholic church, there is no salvation.” And is this the way to negotiate, to make treaties, and draw closer the bonds of friendship between us and the Spanish American States?” I had always understood that the first business of the negotiator was to gain the good will of the opposite party, and that, when this was effected, his treaty was more than half made. But here we are to set out with insults upon the religion of the opposite party, and outrages upon their prejudices, (if you will,) with committing an offence against the law of nations, for which our ministers may be ordered to quit the country; an offence precisely equal to an attempt on the part of *their* ministers, now in this city, to “*exert*” their “*moral influence*” to procure an amendment in our Constitution to make the Roman Catholic Religion the established church in these U. States.*

* In the President’s message to the House of Representatives, this subject of Religion is presented under an aspect entirely different from the view above taken. I am one of those who complain of that difference, and to enable the candid part of the community to judge for themselves, I will here insert the two paragraphs in parallel columns :

Message to the Senate.

There is yet another subject, upon which, without entering into any treaty, the moral influence of the United States may, perhaps, be exerted with beneficial consequences at such a meeting—the advancement of religious liberty. Some of the Southern nations are, even yet, so far under the dominion of prejudice, that they have incorporated, with their political constitutions, an exclusive church, without toleration of any other than the dominant sect. The abandonment of this last badge of religious bigotry and oppression may be pressed more effectually by the united exertions of those who concur in the principles of freedom of conscience, upon those who are yet to be convinced of their justice and wisdom, than by the solitary efforts of a minister to any one of the separate Governments.

Message to the H. of Representatives.

And lastly, the Congress of Panama is believed to present a fair occasion for urging upon all the new nations of the South, the just and liberal principles of religious liberty. Not by any interference whatever, in their internal concerns, but by claiming for our citizens, whose occupations or interests may call them to occasional residence in their territories, the inestimable privilege of worshipping their Creator according to the dictates of their own consciences. This privilege, sanctioned by the customary law of nations, and secured by treaty stipulations in numerous national compacts, secured even to our own citizens in the treaties with Colombia, and with the Federation of Central America, is yet to be obtained in the other South American States and Mexico. Existing prejudices are still struggling against it, which may, perhaps, be more successfully combatted at this general meeting than at the separate seats of Government of each Republic.

A third object to be accomplished by this Congress, is one indistinctly seen in the message*—the establishment of a league of Republics to counterpoise the Holy Alliance of Europe. The honor of being at its head, seems to be tendered to us. This, Mr. President, is a most seductive object. It addresses itself to the generous and heroic feelings of our entire population. The brilliant honor of presiding in a such a league would cast a new splendor over our administration; but it is the business of those who are appointed by the Constitution to counsel the President about it; to take counsel themselves rather from their judgments, than from illusions of glory, and the ardent feelings of young men.

The despots of Europe have confederated for the purpose of putting down liberty. They have embodied one million five hundred thousand bayonets to march against the banner of freedom

I maintain, that the first message proposes an interference in the internal concerns of the Spanish American States; the latter, I admit, suggests nothing but a laudable and familiar proposition. Nobody could object to it. The Senate, the "nineteen" included, would not: for, in the months of December and January preceding, they had unanimously ratified the Colombian and Guatemalian treaties, each of which contained the stipulation for freedom of worship and right of burial in decent and suitable places. I have heard of no difficulty in getting the privilege of worship from "*the separate Governments*;" we have it from them as far as we have treaties with them; and I can see no necessity for going to Panama for it.

In the second message, there is also this sentence:

"It may be, that in the lapse of many centuries, no other opportunity so favourable will be presented to the Government of the United States to subserve the benevolent purpose of *Divine Providence*, to dispense the promised blessings of the Redeemer of mankind."

I do not like this jumbling of *politics* and *religion*.

In monarchies, Church and State naturally go together; in Republics, they should be kept apart. Their union is more dangerous to liberty, than the union of the purse and the sword. It was the religious consular order of 1801 for the burial of Pius 6th, that made the ten years' Consul a Consul for life.—Every Catholic in France voting for the *life-estate*, at the election of 1802; and this estate was only converted into a *fee simple* by the Conservative Senate in 1804.—The burial of a dead Pope, in 1801, brought a living one to Paris in 1804, to exclaim at the Imperial Coronation, "*Vivat Imperator in æternum*." "May the Emperor live forever!" After all, the Consul, General, and Emperor, had no religion at all. This he told us at St. Helena. In Egypt a Mussulman, in France a Catholic, in St. Helena a Free-thinker.

I say, I do not like this jumbling of politics and religion. My dislike to it dates from the reading of Cromwell's expulsion of the Rump Parliament, when he said to one member, "*thou art an adulterer*;" to another, "*thou art a hypocrite*;" to a third, "*the Lord hath no further occasion for thee*," and to the whole,—"*I have besought the Lord, night and day, not to put me upon this work; but he hath sent me here to drive ye all away—get ye gone!*"

* The President in his second message, the one to the House of Representatives, has come [out] more explicitly on this subject. He even seems to stimulate Congress by piquing their pride on the delicate article of their animal courage. He says, (in answer to the supposition that the Holy Allies may take offence at this meeting at Panama) that "The Holy League of Europe itself was formed, without inquiring of the United States, whether it would, or would not, give umbrage to them. The fear of giving umbrage to the Holy League of Europe, was urged as a motive for denying to the American nations the acknowledgment of their Independence. That it would be viewed by Spain as hostility to her, was not only urged, but directly declared by herself. The Congress and administration of that day consulted their rights and duties, and not their FEARS."

wherever it can be seen. One of the *protéges* of this alliance is engaged in war with the Spanish American States, formerly his colonies; and these states have confederated against *him*, as we confederated against *our* ancient master, in the war of the Revolution. For the success of all their objects in this confederation, they have the prayers and the best wishes of all the friends of liberty throughout the globe. But I cannot advise the President to enter into this confederation as a partner, neither upon the open sign, nor in the secret articles.* I cannot approve even of a dormant partnership in this business. Not that I am determined, in no event, to make common cause with these new republics, or any one of them, in a contest with the combined powers of Europe; but because I would be the judge of the occasion which required me to do so, and free to act as I thought proper, when the occasion occurred. The occasion *may* occur, Mr. President. We have the Holy Allies in front and in rear, in Europe and in Asia. They may conceive it to be the shortest way of accomplishing their final object, to extinguish, at once, the light of liberty in the new world; and the subjugation of the new Republics might be the first step in that great work. In such an event, I would not wait for the dastardly privilege of being the last to be devoured. I would go into the contest from the beginning; I would grapple the universal enemy while he was engaged with my neighbor; I would go into the conflict not as ally, but as principal; not with regulated quotas and starving contingents, but with all our power by land and sea. I would go into it to conquer or to perish. I would stake life and property, and Household Gods, upon the issue. I would fight the battle of desperation and of death. It would be the last struggle for human liberty, and should be worthy of the cause; great in the triumph, and greater still in the fall!

The relations of Hayti with the American states, (these United States inclusive) and the rights of Africans in *this* hemisphere, are two other questions to be "*determined*" at the Isthmus. We learn this from a paragraph in the letter of Mr. Salazar, the Colombian Minister. I will read it: for in matters of this kind, we cannot be too exact.

The Paragraph.

"On what basis the relations of Hayti, and of other parts of our hemisphere that shall hereafter be in like circumstances, are to be placed, is a question simple at first view, but attended with serious difficulties when closely examined. These arise from the different manner of regarding Africans, and from their different rights in Hayti, the United States, and in other American States. This question will be determined at the Isthmus, and, if possible, an uniform rule of conduct adopted in regard to it, or those modifications that may be demanded by circumstances."

Our policy towards Hayti, the old San Domingo, has been fixed, Mr. President, for three and thirty years.—We trade with her, but

* The Colombian Minister proposes that a defensive alliance against European Powers shall be formed between the United States and the Confederates at Panama, to be kept "*secret*" until the *casus fœderis* should occur. (Letter to Mr. Clay, Nov. 2d, 1825.)

no diplomatic relations have been established between us. We purchase coffee from her, and pay her for it; but we interchange no Consuls or Ministers. We receive no mulatto Consuls, or black Ambassadors from her. And why? Because the peace of eleven states in this Union will not permit the fruits of a successful negro insurrection to be exhibited among them. It will not permit black Consuls and Ambassadors to establish themselves in our cities, and to parade through our country, and give their fellow blacks in the United States, proof in hand of the honors which await them, for a like successful effort on their part. It will not permit the fact to be seen, and told, that for the murder of their masters and mistresses, they are to find *friends* among the white people of these United States. No, Mr. President, this is a question which has been *determined* HERE for three and thirty years; one which has never been open for discussion, at home or abroad, neither under the Presidency of General Washington, of the first Mr. Adams, of Mr. Jefferson, Mr. Madison, or Mr. Monroe. It is one which cannot be discussed in *this* chamber on *this* day; and shall we go to Panama to discuss it?—I take it in the mildest supposed character of this Congress—shall we go there to *advise* and *consult* in council about it? Who are to advise and sit in judgment upon it? Five nations who have already put the black man upon an equality with the white, not only in their constitutions but in real life; five nations who have at this moment (at least some of them) black Generals in their armies and mulatto Senators in their Congresses! And who is the counsel retained on *our* part, to plead *our* cause before that tribunal?....Mr. President, have we forgot the Missouri question, its agitators, and their doctrines? I say the agitators! for I separate the credulous crowd that followed, from the designing few that went ahead. Have we forgot the doctrines and the leaders of that day?—On this floor we had one, who proclaimed to our faces, that slavery did not exist! could not exist! was condemned by God and man! by our own Declaration of Independence! by the nature of our Government! and that the Supreme Court would so declare it! Well, sir, this gentleman has been sent to London, to plead the cause of *slave-holders* before the King of Great Britain; to claim payment for *slaves* taken from us during the war, twelve years ago, and payment withheld ever since, in violation of the treaty of Ghent. This gentleman was one of those agitators, and we thought him for a long time the most violent and determined; but not so the fact: for when this gentleman had lost the "*restriction*," he scorned to go against the "*constitution*" on account of some few negroes and mulattoes. He told me so himself, and his conduct was conformable to his declaration: for he spoke no more on the subject.

But now came forth, upon another floor, another agitator, of far different temper; who, having taken the hold which knows no relaxation, resisted the admission of Missouri during the entire session of 1820—'21, upon the single isolated point of *free negroes' and mulattoes' rights*! And now, this very individual, who kept Missouri out of the Union for one whole year, because she would not take free negroes and mulattoes into her bosom—this identical individual

is to go to Panama to prevent the black ambassadors and consuls from Saint Domingo, from coming into the bosom of the United States! But gentlemen say it is only for advice and consultation. I answer, that the question is not debateable, neither at home nor abroad; not even in this chamber, where we have sincere advocates and unprejudiced judges. In reply to our objections to Mr. Sergeant, they say that Mr. Anderson goes along to plead the cause of the slave holders. I say, if he must go upon such an errand, give him an assistant, not an opponent. Give him another Southern man, not a Missouri agitator, not a *President* of an *Abolition Society*, not the veteran advocate of free negroes' and mulattoes' rights! * They say they only go to consult! I say, there are questions not debateable. I would not debate whether my withholding the advice which the President requires upon this occasion, is the effect of a "*faction and unprincipled opposition*;" I would not debate whether my slave is my property; and I would not go to Panama to "*determine the rights of Hayti and of Africans*" in these United States. Mr. President, I do repeat, that this is a question which ought not to be agitated by us, neither at home nor abroad. The intentions of the agitators are wholly immaterial. The consequences to us will be the same, whether their designs be charitable or wicked. Knaves can do nothing without dupes. The wicked would be harmless, were it not for the good men who become their associates and instruments. Who made the massacre of San Domingo? Was it not the society of "*Les Amis des Noirs*" † in Paris? And who composed that society? I answer, every thing human, in the shape of virtue and of vice, from *Lafayette* and the *Abbe Gregoire*, down to *Marat* and *Anacharsis Kloutz*. The speeches, the writings, and the doctrines of this society, carried to San Domingo by emissaries with "religion in their mouths, hell in their hearts, and torches in their hands," produced that revolt, the horrors of which yet harrow up the soul, and freeze the blood.—That revolt, in which the sleeping babe was massacred in its cradle—in which the husband and the father, tied to his own gate, beheld, by the light of his burning house, the violation of his wife—saw his daughters led off—and received, as a relief from his horrors, the blow of the axe which scattered his brains upon the ground. And how was the news of these scenes received in Paris, by the authors of so much mischief? Very different, Mr. President, by the different members of the society. The hearts of the good were rent with anguish; but the wicked rejoiced with an exceeding joy. Their dens, smeared with human blood, resounded with acclamations!—"Perish the Colonies—save the PRINCIPLE!" was the cry of these infernal monsters; and have we not got societies here treading in the steps of that at Paris? Is not our advocate at Panama a President of one of these societies, whose principles, "*carried out to their legitimate conclusions*," will justify the slaves of this continent in re-enacting the tragedy of San Domingo? Are not the slave-

* The vote on Mr. Anderson's nomination was one more, in his favor, than there was in favor of Mr. Sergeant. Mine made the difference.

† "*The friends of the blacks?*"

holding States filled with emissaries, preaching doctrines which lead to the same result? Has not a second *Anacharsis Klostz* appeared in France, sent his petition here, and found a person in the Speaker's chair to present it to the House of Representatives, in which the *total destruction* of all the slave-holding States is recommended as a "*sublime*" measure?

[Mr. B. also referred to an address delivered by Judge Story, to a Grand Jury in Boston, during the agitation of the Missouri question, which he considered to be uncalled for by the case before the Court, and going the whole length of justifying the insurrection of our slaves. He quoted from memory, and begged to be corrected if he was wrong. He paused for the correction—none was given.]

But there is one other point of view, Mr. President, in which I wish to look at this black and mulatto question. It is that point of view which exhibits the real parties to it, their conduct upon it, and their weight in its decision. Who are the real parties? They are the States south of the Potomac, south of the Ohio, and the State upon the right bank of the Mississippi. What is *their* conduct? They are in the opposition, united, sir, against this mission, solid as a wall of granite, some fissures about the edges excepted. And what their weight in the decision? A feather; dust in the balance! Yet, sir, the *real* parties to this question are disregarded, and strangers to their interests decide it for them.

The last, and the *main* argument, relied upon by the President, for sending this mission, is the fact of *invitation* to do so. This he calls the "*decisive inducement*." The President is particular in the use of words; we are permitted, therefore, to say, that all other reasons for sending the mission were *persuasive* only, until the weight of this invitation *decided* his mind. I felt the full force of this decisive reason myself. Invitations to mere individuals are often embarrassing, and cannot be accepted without inconveniences or impropriety, nor refused without giving offence. With nations, the acceptance or decline of respectful invitations, often become an affair of state, full of responsibilities. When then I saw it stated in the newspapers, that we had been "*invited*," I felt the delicacy of the position in which our Government was placed. When the annual message was read, and I heard from authority, that the invitation had been *given*, and *accepted*, and that ministers would be *commissioned*, I was ready to give my advice in favor of sending them, with a protest against the President's right to send them without such advice. When the message of the 26th December was read, and the fact of the invitation placed in high relief, as the *decisive cause*, I responded to the sentiment, and said to the Senator next to me, "*THAT is the strongest of all the reasons.*"* But what was my astonishment on coming

* In the President's message to the House of Representatives, he dwells with warmth and animation upon the force of this invitation. He makes it an affair of *insult* to refuse it. "*To insult them by a refusal of their overture.*" "*To meet the temper with which this proposal was made, with a cold repulse.*" "*Nothing can be gained by SULLEN repulses and ASPIRING pretensions.*" Such is the language of the message to the other branch of the Legislature. But I deny that the alternatives lay between a blind acceptance, and a cold, sullen, and insulting refusal! I say, that the President and his cabinet would have proved themselves

to look among the appended documents, to find out the real circumstances of this invitation ! I found them to be entirely different from what I had supposed them to be, and from what the newspapers and the President's Messages had induced me to believe them to be. But as this ground is delicate, sir, I must trust nothing to memory, nor even to my notes. Let the President's organ speak, the report of the Secretary of State, which accompanied the message of December 26th.

The Report.

"SIR: Agreeably to your direction that a statement should be presented to you of what passed in the Department of State, with the Ministers of the Republics of Colombia, Mexico, and Central America, in respect to the invitation to the United States, to be represented in the Congress at Panama, I have the honor now to report :

"That, during the last *Spring*, I held separate conferences, on the same day, with the respective Ministers of Mexico and Colombia, at their request, in the course of which, each of them verbally stated that his Government was desirous that the United States should be represented at the proposed Congress, and that he was instructed to communicate an invitation to their Government to send representatives to it. But that; as his Government did not know whether it would, or would not, be agreeable to the United States, to receive such an invitation, and as he did not wish to occasion any embarrassment, he was charged informally to inquire, previous to the delivery of the invitation, whether it would be accepted, if given by both of the Republics of Mexico and Colombia. It was also stated, by each of those Ministers, that his Government did not expect that the United States would change their present neutral policy, nor was it desired that they should take part in such of the deliberations of the proposed Congress as might relate to the prosecution of the present war.

"Having laid before you what transpired at these conferences, I received, about a week after they had been held, your direction to inform the Ministers of Mexico and Colombia, and I accordingly did inform them, that their communication was received with due sensibility to the friendly consideration of the United States by which it had been dictated; that, of course, they could not make themselves a party to the existing war with Spain, nor to councils for deliberating on the means of its further prosecution; that the President believed such a Congress as was proposed, might be highly useful in settling several important disputed questions of public law, and in arranging other matters of deep interest to the American Continent, and strengthening the friendship and amicable intercourse between the American Powers; that, before such a Congress, however, assembled, it appeared to him to be expedient to adjust between the different powers to be represented several preliminary points, such as the subjects to which the attention of the Congress was to be directed, the nature and the form of the powers to be given to the diplomatic agents who were to compose it, and the mode of its organization and action. If these preliminary points could be arranged in a manner satisfactory to the United States, the Ministers from Colombia and Mexico were informed, that the President thought the United States ought to be represented at Panama. Each of those Ministers undertook to transmit to his Government, the answer which was thus given."

to be unfit for their stations if they could have discovered no middle ground between these two extremes. They did see the middle ground. They resorted to it. They took a position upon it like statesmen; occupied it for six months; and then abandoned it without any reason that has been shewn to us, the Senate. Then why this talk about *insult* in the second message? Is it an after thought, a piece of material, to be worked up with other material, to compose an impassioned appeal to the People through the medium of the House of Representatives?

This report, Mr. President, put a new face upon the character of the invitation. I found it had not been peremptory, not of a kind to impose an obligation of acceptance, nor so understood by either of the parties. I found that our Government had been sounded with the utmost delicacy, in an unofficial conversation, to know whether it would be agreeable to itself to receive the invitation, and that the President had met the overture with the utmost propriety, with friendly professions, and with a stipulation for preliminaries which gave him the 'vantage ground, and enabled him to accept the invitation, eventually, with safety and honor, or to decline it without offence. Thus far the conduct of both parties must receive an unqualified approbation. But what next? Why, sir, on the second, third, and fourteenth of November ensuing, the preliminaries not being complied with, the invitation is delivered in form; and on the thirtieth of the same month it is accepted "*at once*."—Six months roll away, and at the end of that time, the ministers send in their answers, the conditions not complied with, and our Government accepts "*at once*." Call this an invitation! Sir, it is but little short of the reverse—We are invited provisionally,—we make conditions;—the conditions are not complied with; but the invitation is extended in form. What is this but a dispensation to stay away? The non-compliance with the conditions is the *substantive* answer, and the formal invitation to attend, *nevertheless, &c.* is the compliment to grace the repulse.—Let any gentlemen make the case his own. He is invited to a party, either for business or pleasure—he makes conditions—he must know four things, or not come. The four things are told him, but the inviters say, "*we shall be glad to see your sir!*"—What is this but leave of absence? Sir, I am not joking about this matter. I do believe that our attendance, at the forepart of this session, will be embarrassing and disobliging to the Confederates, and that, if they wish us to come at all, it is not immediately. I will give another reason for this inference, in the proper place. At present it is sufficient to know the fact, that these confederates are determined upon the invasion of Cuba and Porto Rico, and that we are going to Panama to advise against it.

From this view of the invitation, it is clear that it was not of a character to lay us under an obligation to accept it—that we might have declined it without offence, and that our final acceptance was more *our* invitation than theirs. But there are two other aspects under which this invitation is still to be looked at. In the first place, it comes from a *part* only of the confederates—*three* out of *five*—Colombia, Mexico, and Guatemala; Peru and Chili not having joined in giving it. In the next place, our invitation is by word of mouth, or, at least, by a note. We go, if we go at all, upon a parole request, whereas all the other powers go upon treaties. They create the office by treaties, before they fill it, and in this they do right. Their Constitutions are copied from ours, and from *their* example our Government should learn, if not from *our* arguments, that this office should be *created* before it is filled. But, on these points, as on many others, I limit myself to stating the proposition, and refer the Senate to the unanswered and irrefutable arguments of

gentlemen who have preceded me—the *Senators*, Macon, Randolph, Hayne, Woodbury, Dickerson, Van Buren, White, Holmes, Berrien, and him whose argument we have, but unhappily not his presence—Tazewell: These have broke the way before me, overturned all obstacles, silenced all voices, and left to me the easy task of following in the rear—a file closer in the column which traverses the field without resistance.

Some further arguments, Mr. President, and of a kind which I was not prepared to hear, have been pressed into the service of this mission. It is said that our refusal to give this advice will embarrass the President; that he has already accepted the invitation, and informed the world that Ministers would be sent; and that he will be disgraced if they do not go. We have just seen, sir, what manner of invitation this is; and as for that precipitate acceptance, six days before the meeting of the Senate, to urge *this* acceptance in favor of our acting, at this time, would be to make one act of imprudence a plea for another; and, as for the declaration, that Ministers would be commissioned, I look at it in this wise: Either the President still believes that he has the right to do that thing, or he does not. Take which you please. In the first case, let him send out his ministers, and meet his responsibility to this to Senate and to the people; in the other, let him acknowledge his error, make atonement to the offended majesty of the Constitution, and relieve himself and us from the effects of the strife which must otherwise subsist between us, and spread itself throughout the states of this Confederacy.

The argument of embarrassment is one to which I am not insensible, and one to which I have already *once* yielded under this administration. I allude to the nomination of Mr. King. In that case I yielded to the embarrassment? but the present does not come forward under similar circumstances of excuse and mitigation. In that case the nomination was one of six months standing; the Minister was gone, with his children and grand-children—he was at his post, engaged in his negotiations—his outfit and salary in his pocket. Here, on the contrary, is an acceptance of six days; the nominees yet at home; their salaries yet in the Treasury. Mr. King's nomination was to fill a vacancy—a *pro. tem.* appointment, to endure to the end of this session of Congress—and was clearly within the Constitutional competency of the President: but the institution of this Panama Mission, was a new measure—the promise to send ministers was a promise to make an original appointment, and clearly without the President's power. My reasons for yielding to embarrassment, in the case of Mr. King, do not apply here. The Senate have their rights as well as the President, and it is their duty to transmit them, unimpaired, to their successors. One, and the most important of these rights, is that of free deliberation. They are made counselors to the President—they were intended to be an efficient body, a check and control upon the President—in some respects superior to him, particularly in the article of impeachment; for the Senate may sit in judgment upon the President, and pronounce the forfeiture of

of his office; but even then they could not judge of his "*motives*"*—that would belong to God. They could only judge him by his *acts*. We have a right to give him advice, in the plain meaning of the word—advice *before-hand*, to regulate his conduct, and not advice after the fact, to confirm and applaud what he may have done. To give this advice like Senators—like freemen, and in the spirit of the Constitution, we must be untrammelled and unembarrassed. The President has no right to embarrass *us*; yet he has twice done so in one session. Once we have yielded—shall we yield again, and so on from time to time, until the American Senate shall degenerate into a Parliament of Paris—a *Bed of Justice*, for the registration of Presidential edicts? Yet this is the real argument which is getting this Panama Mission along. This consideration is dragging it through the Senate, and, this left out, and ourselves fairly consulted, according to the spirit of the Constitution, and left free to act, without giving offence, and my word for it, the voice would be general, if not unanimous, *against* appointing ministers, and *in favour* of sending agents or commissioners.

Another argument near akin to the one last mentioned is also urged upon us—one which addresses itself to the kind feelings of the Senate, and asks if they have not confidence in the President? I answer that this is not a case for confidence, but for advice. The two things are distinct in their nature, and ought not to be confounded in practice. There are cases when the President has a claim to confidence, and then it would be a breach of the spirit of the Constitution to withhold it; but in this case he asks for *advice*, that is, for us to tell him what he ought to do, and, instead of giving him real counsel to do a thing, or let it alone, this miserable argument of confidence steps forward to say, "*Do as you please, Sir.*" In a case of real difficulty, Mr. President, such good natured counselling would give the Executive no help; and, in a case in which he was determined to have his own way, such tame acquiescence in his views would sink the Senate into a mere approbatory council, and place them as a sort of political break-water, between the President and the People, to shelter *him* from the tempest of their just indignation.

† There is one other consideration, Mr. President, which I wish to bring to bear upon this question—a consideration which would have commanded considerable attention about a quarter of a century ago, but for which I cannot claim much respect in these "sky-light," or

* This refers to the President's confidential message to the Senate, of February 17th, in which the imputation of bad motives in the Senate, and the President's claim to judge them, seems to be inferrible. The following is the sentence: Let the reader judge.

"Believing that the established usages of free confidential communication between the Executive and the Senate, ought, for the public interest, to be preserved unimpaired, I deem it my indispensable duty to leave to the Senate itself the decision of a question, involving a departure, hitherto, so far as I am informed, without example, from that usage, and upon the motives for which, not being informed of them, I do not feel myself competent to decide.

JOHN QUINCY ADAMS."

† This topic was pretermitted in the spoken speech, but it is deemed necessary to a fair view of the mission, to insert it here.

father, sky-rocket, times, when administration is circumnavigating the globe, and vaulting against the heavens, to find out objects of expenditure—it is the consideration of EXPENSE! We already have Ministers, Charge d’Affaires, and Secretaries, under full salaries, with all the Spanish American States, and we are about to institute a duplicate mission at a great additional cost. Here is a book which tells us something about it. It is a little blue volume of 297 pages, filled with the names of about 10,000 persons who are drawing money out of the public treasury. Let us read a page in it.

THE BLUE BOOK. PAGE 11.

JOEL R. POINSETT, Envoy Extraordinary and Minister Plenipotentiary to Mexico,	\$9,000	per annum
JOHN MASON, Jr. Secretary of Legation,	2,000	do.
RICHARD C. ANDERSON, Minister Plenipotentiary and Envoy Extraordinary to Colombia,	9,000	do.
BEAUFORT T. WATTS, Secretary of Legation,	2,000	do.
CONDY RAGUET, Charge d’Affaires to Brazil,	4,500	do.
WILLIAM MILLER, (now John Williams,) do. to Guatemala,	4,500	do.
JOHN M. FORBES, do. to Buenos Ayres,	4,500	do.
HENAN ALLEN, Minister Plenipotentiary and Envoy Extraordinary to Chili,	9,000	do.
SAMUEL LARNED, Secretary of Legation,	2,000	do.
..... Charge to Peru,	4,500	do.

Sixty thousand dollars per annum for salaries, and as much more for outfits and contingencies, say \$120,000. Add the expenses of this proposed mission to that sum :

Richard C. Anderson, &c.	\$9,000	per annum.
John Sergeant, &c.	9,000	do.
William B. Rochester,	2,000	do.

Twenty thousand more. Then double it for outfits and contingencies and make forty thousand. Then add the expense of equipping and keeping at sea, I know not how long, the ship of war which is to carry out our Ministers, I know not at what cost, but say \$50,000, and add all the items together.

We shall then find that we have ministers with all the confederates, under full pay, treating with these same confederates at home, *or doing nothing*, while we are sending a splendid embassy to treat with these same States at Panama. If there is economy in this, I know not the meaning of the word; it is a word indeed of which the sound, as well as the meaning, seems to be lost, and the mention of which at this time has more the air of intrusion and of interrupting the company, than the aspect of presenting a serious topic for consideration.*

I now return, Mr. President, to the resolution which I have submitted. I admit that my argument goes beyond it; but I only ask the Senate to vote the extent of the resolution itself. What is it? Why, that we CANNOT advise the President to send this Mission to Panama before we shall have had *satisfactory* information upon the *character* of the Congress, the *subjects* it is to act upon, the *powers* of the Ple-

* Mr. Van Buren submitted a resolution in the Senate, importing, that it would be better to order up some of these unoccupied officers to Panama, than to institute a new mission. But his resolution was rejected, 24 to 19, being the same vote as on the main question.

nipotentiaries, the mode of *organizing* the body, and its mode of *deciding* questions.* It seems to me, that the only answer which could be admissible against this resolution, would be an allegation unfounded, and therefore, not urged, that we have the information already; for it is contradictory to ask us for *advice*, and to withhold the statement of facts upon which alone we could give advice. Instead of this, we are urged to give the advice *instantly*, and by way of consolation, we are asked, "Have you not confidence in the President?" Then, I say, let him act on his own responsibility, not mine. Let him commission his ministers, as he said he would, and be the consequences *his*, not *ours*. He says that he has the power; then exercise it! Why persist in dragging the Senate at his heels?—But what will be the effect of adopting my resolution? Will it defeat the mission? Not at all, sir. It will only postpone it for information which we have a right to expect by every arrival from the seat of the Congress, or from the cities of the neighbouring Powers. The Congress was in session on the first day of November last. So says Mr. Obregon, in his letter of the third of that month. This is four months ago. Since that time, we have had news from the confines of Asia, not only upon the straight line, but round by the head of the Borysthenes, the Gulf of Finland, and the Baltic sea. The Emperor Alexander died at Taganrock, on the borders of the Sea of Azoph, twenty days posterior to the meeting of this Congress, and we have had intelligence of his death, even by the way of Moscow and St. Petersburg, forty days ago. Must we not, then, soon hear from our *neighbours* at Panama?

* It will be recollected that these are the President's own words, as communicated by him in Mr. Clay's report accompanying the Message of December 26th. In his Message to the House of Representatives, he seems to have changed ground entirely upon this point. Far from wanting "satisfactory information" any longer, the idea of it is turned into ridicule. The "*indefinite*" nature of the measure becomes a "*cogent reason for its adoption*." But let the two messages speak for themselves. Here they are.

Message to the Senate.

"I stated to you, by *direction of the President*, that it appeared to him to be *necessary*, BEFORE the assembling of such a Congress, to *settle* between the *different* Powers to be represented several *preliminary* points, such as the *subjects* to which the *attention* of the Congress should be directed. the *substance* and the *form* of the *powers* to be given to the respective representatives; and the mode of *organizing* the Congress; and that, if these points should be *satisfactorily arranged*, the President would be disposed to accept, in behalf of the United States, the invitation with which you were provisionally charged."

Message to the House of Representatives.

"It has, therefore, seemed to me *unnecessary* to insist, that every *object* to be discussed at the meeting should be specified with the *precision* of a *judicial sentence*, or enumerated with the *exactness* of a *mathematical demonstration*. The purpose of the meeting itself is to deliberate upon the great and common *interests* of several new and neighbouring nations. If the measure is new and without precedent, so is the situation of the parties to it. That the *purposes* of the meeting are *somewhat indefinite*, far from being an *objection* to it, is among the *cogent reasons for its adoption*."

"Precision of a judicial sentence—exactness of a mathematical demonstration." This ridicule cannot fall upon the "Nineteen."—They only asked for "*satisfactory information*," such as the President himself asked for from April or May up to the 30th day of November:

But some gentlemen seem to consider this Congress as a feast, which may be over before the distant guests arrive, unless they hie away with all possible speed. Not so the fact. It is not to be over so soon. Whether it is to be a "*Love-feast*" or a feast of the *Lapithæ* and *Centaurs*, is not for me to foreknow and foretell, but one thing is certain—it is not intended to be over in a day. It is intended to last *for ever*! and surely a thing which is intended to be eternal, will last long enough to give us a little time for reflection before we rush into it. But it is further said that something may be done to our detriment before we arrive. Not so the fact. Look to Mr. Obregon's letter of November 3d. the one last quoted. He says the Congress is in session, and that they "*will be engaged upon the preliminary rules of the Assembly.*" Why, sir, these *preliminaries* and these *rules*, are the very things we want to know; the same for a knowledge of which the President stipulated, *before* he would accept the invitation; the same for which my resolution proposes to wait: and shall we not wait a few days, weeks, or even months, to receive such important and long desired intelligence?

These preliminary rules being agreed upon, what next? Why Mr. Obregon goes on to inform us that the Congress will *then* be occupied upon "*questions exclusively belonging to the belligerents.*"

"*Questions EXCLUSIVELY belonging to the BELLIGERENTS!*" Now, Mr. President, amidst all the contrarieties of fact and opinion which prevail on the subject of this Congress, there is one point, at least, upon which the whole of us agree, President, Secretary, Ministers, friends and enemies to the mission, in the House and out of the House, all, all agree in this one point. And what is that? Why, sir, that we have nothing in the world to do with "*questions belonging EXCLUSIVELY to the belligerents.*" Why, then, not suit the action to the word? Why not wait a little while for the question to be disposed of? Why rush forward to commit our neutral character upon a discussion of belligerent questions in a council of war? And here I will bring out the suggestion which I have hinted at before. I intimated that the confederates did not wish our Ministers to be present at the forefront of this Congress. In making this suggestion, I went upon the obvious principle that they did not want counsellors to dissuade them from doing what were determined to do, and what any skilful and capable belligerents will do—*carry the war into the enemy's country*—invade Cuba, Porto Rico, the Canaries, the Phillipines, and Old Spain herself, upon her own coasts, and within the Pillars of Hercules! and for the truth of this suggestion, I now hold the proof. Mr. Obregon's letter furnishes it. He tells us that the belligerent questions are now under discussion; that they concern the confederates "*exclusively,*" and what stronger intimation could a gentleman give that the time has not arrived for us to go to the Congress, and that we should be excluded if now there?

But, gentlemen say that we shall be anticipated, and counteracted, if we do not send immediately; that a Power, which never sleeps when her interest is at stake, will be before us with her operations upon the Isthmus. Granted, sir, because that nation will do what

we ought to have done, send an agent, without diplomatic character or privilege. "*La Senora de las Naciones*" will, doubtless, be there; not in the questionable and clumsy shape of a formal embassy,* but in the active, subtle, penetrating, and pervading form of unofficial agents, speaking the language of the country, and establishing themselves on the basis of social intercourse in every minister's family; and this is precisely what we should have done. We should have sent an agent, as President Washington sent Gouverneur Morris to London, in 1790, or a commissioner, as President Monroe sent Messrs. Rodney, Prevost, and Brackenridge, to South America, in 1817. This Panama mission is a case for agents, and not for ministers. Every object to be accomplished by ministers might have been accomplished by agents or commissioners—the greater part of the expense saved, and the breach of the Constitution and of the law of nations avoided. Agents or commissioners, could have expressed our good wishes, made explanations, held consultations, given advice, *if requested*, and sent home reports of all they saw and did. This is all that either of the Senators propose the ministers to do: for they agree, with us, that they cannot negotiate treaties. The name of Agent, or Commissioner, would not have prevented the first citizens of the Republic from going out on this service. Mr. Gouverneur Morris was not inferior to Messrs. Anderson or Sergeant in point of talents, yet, upon the letter of President Washington, without diplomatic character or privilege, or ambassadorial *outfit*, he held *consultations* with the Duke of Leeds and Mr. Pitt, transmitted the result to his own Government, and paved the way for the commercial treaty which followed. And this did not degrade Mr. Morris, who had been a member of the old Congress, deputy in the Convention which framed this Constitution, and member of this Senate under the Constitution, nor prevent him from being appointed soon after Minister Plenipotentiary and Envoy Extraordinary to Louis the 16th. So, of Mr. Rodney, and of his rank of Commissioner to South America, which did not prevent him from becoming, afterwards, Senator, and Minister.

I think, Mr. President, that enough has now been said, surely, enough until some part of it is refuted—to justify the Senate in withholding its advice to the President to send these Ministers to the Congress at Panama. I admit that Congress to be a wise measure for the Spanish American States, as our Congress was a wise one for us in 1778; but it is impossible for us to advise this mission in any of the various forms, or under any of the names and colors, in which it has been presented to us. We cannot send Ministers *into* the Congress, for that would make us a party to it; we cannot send them *to* it; for they are not sovereign to receive them; we cannot send them to act *with* it, for that is an organized body, and our ministers will be individual; we cannot send them to hang about it, and talk, and remit home accounts of consultations; for they are accre-

* This was spoken in the Senate on the 18th. Two weeks afterwards we received information that Mr. *Dawkins*, British Commissioner, was on his way to Panama. *Commissioner*, not *Minister*.

dited to *nations*, and cannot sink to the condition of unofficial agents and lobby ministers.

But the mission is said to be popular. Certainly it is exhibited under forms to catch the public favor. Religion, Liberty, and Commerce! Such are the banners under which it goes forth! Banners well calculated to draw after them a crowd of followers from every walk and station in life. The prospect of a political crusade against the "*bigotry and oppression*" of the Roman Catholic church, must warm the hearts and command the benedictions of every religious sect in the Union. Even the Unitarians, who are not Christians, must be struck with joy, and filled with delight, at beholding it. The institution of a sacred Alliance of Republics, to counterpoise the Holy Alliance of Kings, must fire the souls of all the votaries of Liberty. The generous Republicans of the West must be particularly inflamed by it. Then comes commerce with her golden train, to excite the cupidity and to fire the avarice of the trading districts. New Orleans, Charleston, Baltimore, Philadelphia, New York, and Boston, must see their riches suspended upon the issue of this mission to the Isthmus. In a word, every section of the country; mountain, valley, and sea-coast; every class of citizens, and all denominations of religious sects, must find something in it to suit their particular taste, and to accommodate their individual wishes. It will be to no purpose that *Prudence*, in the form of a Senatorial minority, shall come limping on behind; and endeavouring to prove that all these expectations are vain and illusory. Cold calculation will avail nothing against the fascinations of Religion, Liberty, and Commerce. Two of these objects alone, so far back as three hundred years ago, precipitated the Old upon the New World—fired the souls of Cortes, Pizarro, and their followers; overturned the thrones of Montezuma and the Incas, and lighted up a flame in which the 'Children of the Sun' were consumed like stubble. What, then, may not be expected when, to the inspirations, and the glitter of these two objects, are added the noble impulsions and the brilliant attractions of Liberty? But great as are all these causes of popular excitement, the success and popularity of the mission is not allowed to rest exclusively upon them. The terrors of denunciation are superadded to the charms of seduction. Those who cannot be won by caresses, must be subdued by menace. A body co-ordinate, and bodies not co-ordinate, have been set in motion against the Senate. Loud clamors beset our walls. The cry of "*faction*"—"opposition"—"*unprincipled*," resound through the streets. Woe to the Senator that hesitates! Woe to him that refuses his advice! Woe to him that asks for information before he gives it! To withhold advice, is to deny confidence; to deny confidence, is to oppose the Administration; to oppose the Administration is to commit a crime of the greatest enormity; for the instant punishment of which, the air itself seems to be alive and filled with avenging spirits.

I have now finished, Mr. President, what I had to say. I do not mean to recapitulate. I am no enemy to the new Republics to the South. On the contrary, I have watched their progress with all the solicitude of a partizan and all the enthusiasm of a devotee, from the

first impulsion at *Buenos Ayres*, in 1806 and at *Dolores*, in 1808, down to the "crowning mercy" at *Ayachuco*, in 1824. I saw with pride and joy the old Castilian character emerging from the cloud under which it had been hid for three hundred years. When first on this floor in 1821—'2, I voted for the recognition of the new Republics—I gave my vote with a heart swelling with joy for the greatness of the event, and with gratitude to God that he had made me a witness to see, and an instrument to aid it. Whether these Republics shall be able to maintain their independence, and the free form of their Governments, is not for me to say, nor is the decision of *that* question material to my decision of *this*. I wish them to be free and Republican, and I shall act upon the presumption that they are to be so. I wish for their friendship and commerce, and to obtain these advantages, I have advised the sending of ministers to all the States, no matter how young and unimportant, and would now advise an agent or commissioner to be sent to Panama. I will not despair of these young Republics. Under all their disadvantages, they have done wonders. The bursting of the chains which bound them to Old Spain, and the adoption of our form of Government, is a stupendous effort for a People sunk for ages in civil and religious despotism. BOLIVAR, VICTORIA, BRAVO, and a host of others, have deserved well of the human race. They have fixed the regards and the hopes of the civilized world. I trust that these hopes will not be disappointed; but in this age of miracles, when events succeed each other with so much rapidity; when the diadem has been seen to sparkle on the brow of the Republican General, it is not for me to hail any man as WASHINGTON until he shall have been canonized by the seal of death.

From Thomas H. Benton

To

Isaac Polk Esq.

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